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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2021–0166]

Acceptability of ASME Code, Section XI, Division 2, 'Requirements for Reliability and Integrity Management (RIM) Programs for Nuclear Power Plants,' for Non-Light Water Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 1.246, ''Acceptability of ASME Code, Section XI, Division 2, 'Requirements for Reliability and Integrity Management (RIM) Programs for Nuclear Power Plants,' for Non-Light Water Reactors.'' This RG describes an approach that is acceptable to the NRC staff for the development and implementation of a preservice inspection (PSI) and inservice inspection (ISI) program for non-light water reactors (non-LWRs). It endorses, with conditions, the 2019 Edition of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code), Section XI, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' Division 2, for non-LWR applications. This RG also describes a method that applicants can use to incorporate PSI and ISI programs into a licensing basis.

DATES: RG 1.246 is available on November 3, 2022.

ADDRESSES: Please refer to Docket ID NRC–2021–0166 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0166. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
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RG 1.246 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22061A244 and ML21120A192, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Margaret Audrain, Office of Nuclear Reactor Regulation, telephone: 301–415–2133, email: *Margaret.Audrain@nrc.gov;* Stephen Philpott, Office of Nuclear Reactor Regulation, telephone: 301–415–2365, email: *Stephen.Philpott@nrc.gov;* and Robert Roche-Rivera, Office of Nuclear Regulatory Research, telephone: 301–415–8113, email: Robert Roche-Rivera. All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

RG 1.246 was issued with a temporary identification of Draft Regulatory Guide, DG–1383 (ADAMS Accession No. ML21120A185).

II. Additional Information

The NRC published a notice of the availability of DG–1383 in the **Federal Register** on September 30, 2021 (86 FR 54253) for a 45-day public comment period. The public comment period closed on November 15, 2021. Public comments on DG–1383 and the staff responses to the public comments are available under ADAMS under Accession No. ML22061A253.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 1.246 does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087); constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants.'' As explained in RG 1.246, applicants and licensees are not required to comply with the positions set forth in RG 1.246.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-*

rm/doc-collections/reg-guides/contactus.html. Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: October 25, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–23572 Filed 11–2–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC–2022–0039]

Dedication of Commercial-Grade Digital Instrumentation and Control Items for Use in Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 1.250, ''Dedication of Commercial-Grade Digital Instrumentation and Control Items for Use in Nuclear Power Plants.'' RG 1.250 provides guidance that the staff of the NRC considers acceptable to meet, in part, regulatory requirements for the dedication of commercial-grade digital instrumentation and control items (I&C) for use in nuclear power plant safety applications.

DATES: RG 1.250 is available on November 3, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0039 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0039. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (PDR), Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

RG 1.250 and the regulatory analysis may be found in ADAMS under Accession Nos. ML22153A408 and ML22003A181, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov* and Dinesh Taneja, Office of Nuclear Reactor Regulation, telephone: 301–415–0011, email: *Dinesh.Taneja@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a new guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

RG 1.250 was issued with a temporary identification of Draft Regulatory Guide, DG–1402 (ADAMS Accession No. ML22003A180).

II. Additional Information

The NRC published a notice of the availability of DG–1402 in the **Federal Register** on March 18, 2022 (87 FR 15456) for a 30-day public comment period. The public comment period closed on April 18, 2022. Public comments on DG–1402 and the staff responses to the public comments are available under ADAMS under Accession No. ML22153A416.

RG 1.250 endorses, with clarifications, Nuclear Energy Institute (NEI) 17–06, ''Guidance on Using IEC 61508 SIL Certification to Support the Acceptance of Commercial Grade Digital Equipment for Nuclear Safety Related Applications,'' Revision 1, issued December 2021 (ADAMS Accession No. ML21337A380).

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

RG 1.250 describes a method that the NRC staff considers acceptable to implement regulatory requirements for dedication of commercial-grade I&C items as basic components. Issuance of this RG does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule); forward fitting as defined in Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests;'' and does not affect the issue finality of any approval under 10 CFR part 52. As discussed in the ''Implementation'' section of this RG, the NRC has no intention to impose this RG as a new requirement.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: October 27, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–23737 Filed 11–2–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1022; Amendment No. 71–54]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, administrative correction.

SUMMARY: This action incorporates certain airspace designation amendments into FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, for incorporation by reference.

DATES: Effective date 0901 UTC November 3, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it makes the necessary updates for airspace areas within the National Airspace System.

History

Federal Aviation Administration Airspace Order JO 7400.11, Airspace Designations and Reporting Points, incorporated by reference in 14 CFR 71.1, is published yearly. Amendments referred to as ''effective date straddling amendments'' were published under Order JO 7400.11F (dated August 10, 2021, and effective September 15, 2021) but became effective under Order JO 7400.11G (dated August 19, 2022, and effective September 15, 2022). This action incorporates these rules into the current FAA Order JO 7400.11G.

Accordingly, as this is an administrative correction to update final rule amendments into FAA Order JO 7400.11F, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Also, to bring these rules and legal descriptions current, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by incorporating certain final rules into the current FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, which are depicted on aeronautical charts.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Corrections

1. For Docket No. FAA–2022–0346; Airspace Docket No. 22–ASW–8 (87 FR 42320; July 15, 2022)

Correction

a. On page 42320, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 42320, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''; and another instance of ''. . . FAA Order JO 7400.11F.'' is corrected to read ''. . . FAA Order JO 7400.11.''.

c. On page 42320, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 42321, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

2. For Docket No. FAA–2022–0473; Airspace Docket No. 22–ASW–9 (87 FR 47097; August 2, 2022)

Correction

a. On page 47097, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 47097, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective

September 15, 2022 . . .''; and another instance of ''. . . FAA Order JO 7400.11F.'' ais corrected to read ''. . . FAA Order JO 7400.11.''.

c. On page 47097, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 47098, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

3. For Docket No. FAA–2022–0474; Airspace Docket No. 22–ACE–11 (87 FR 47098; August 2, 2022)

Correction

a. On page 47098, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 47098, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 47098, column 3, and page 47099, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 47099, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

4. For Docket No. FAA–2022–0523; Airspace Docket No. 22–AEA–7 (87 FR 47342; August 3, 2022)

Correction

a. On page 47342, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 47342, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 47342, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 47342, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 47342, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

5. For Docket No. FAA–2022–0624; Airspace Docket No. 22–ACE–3 (87 FR 50237; August 16, 2022)

Correction

a. On page 50238, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50238, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 50238, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 50239, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

6. For Docket No. FAA–2021–1157; Airspace Docket No. 19–AAL–36 (87 FR 50239; August 16, 2022)

Correction

a. On page 50239, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50239, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 50239, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

6. On page 50240, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G,

Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

7. For Docket No. FAA–2021–1042; Airspace Docket No. 21–ACE–4 (87 FR 50563; August 17, 2022)

Correction

a. On page 50563, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50563, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 50563, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 50564, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

8. For Docket No. FAA–2021–1097; Airspace Docket No. 19–AAL–64 (87 FR 50565; August 17, 2022)

Correction

a. On page 50565, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50565, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 50565, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 50566, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

9. For Docket No. FAA–2021–1083; Airspace Docket No. 19–AAL–62 (87 FR 50566; August 17, 2022)

Correction

a. On page 50566, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50567, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 50567, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

e. On page 50568, column 1, and column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

10. For Docket No. FAA–2022–0693; Airspace Docket No. 22–ASW–12 (87 FR 50928; August 19, 2022)

Correction

a. On page 50928, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 50928, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''; and another instance of ''. . . FAA Order JO 7400.11F.'' is corrected to read ''. . . FAA Order JO 7400.11.''.

c. On page 50928, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 50929, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

11. For Docket No. FAA–2021–0819; Airspace Docket No. 19–AAL–37 (87 FR 51237; August 22, 2022)

Correction

a. On page 51237, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51237, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51237, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective

September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51238, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

12. For Docket No. FAA–2022–0524; Airspace Docket No. 22–AEA–8 (87 FR 51238; August 22, 2022)

Correction

a. On page 51238, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51239, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

c. On page 51239, column 1, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

d. On page 51239, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

13. For Docket No. FAA–2022–0525; Airspace Docket No. 22–ASO–7 (87 FR 51239; August 22, 2022)

Correction

a. On page 51240, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51240, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51240, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 51240, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 51240, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

14. For Docket No. FAA–2022–1005; Airspace Docket No. 22–AGL–29 (87 FR 51241; August 22, 2022)

Correction

a. On page 51241, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51241, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51241, column 3, and page 51242, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

15. For Docket No. FAA–2021–0811; Airspace Docket No. 19–AAL–60 (87 FR 51242; August 22, 2022)

Correction

a. On page 51242, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51242, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51242, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51243, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

16. For Docket No. FAA–2022–0694; Airspace Docket No. 22–ACE–12 (87 FR 51243; August 22, 2022)

Correction

a. On page 51243, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51244, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

d. On page 51244, column 1 and column 2, under Availability and Summary of Documents for

Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

e. On page 51244, column 3, and page 51245, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

17. For Docket No. FAA–2022–0432; Airspace Docket No. 22–ASO–5 (87 FR 51245; August 22, 2022)

Correction

a. On page 51245, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51245, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51245, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 51246, column 1, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 51246, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

18. For Docket No. FAA–2021–0812; Airspace Docket No. 19–AAL–71 (87 FR 51246; August 22, 2022)

Correction

a. On page 51246, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51246, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51247, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51247, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

19. For Docket No. FAA–2022–1006; Airspace Docket No. 22–ACE–15 (87 FR 51248; August 22, 2022)

Correction

a. On page 51248, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51248, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

c. On page 51249, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

20. For Docket No. FAA–2021–0242; Airspace Docket No. 20–AWP–8 (87 FR 51592; August 23, 2022)

Correction

a. On page 51592, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51592, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51593, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51593, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

21. For Docket No. FAA–2021–0244; Airspace Docket No. 20–AWP–9 (87 FR 51867; August 24, 2022)

Correction

a. On page 51867, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51867, column 3, under History, ''. . . FAA Order JO 7400.11F,

dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51867, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 51898, column 1, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 51868, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

22. For Docket No. FAA–2021–0243; Airspace Docket No. 20–AWP–10 (87 FR 51868; August 24, 2022)

Correction

a. On page 51868, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51869, column 1, under Availability and Summary of Documents for Incorporation by Reference, both instances of ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

c. On page 51869, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 51869, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 51869, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

23. For Docket No. FAA–2021–1047; Airspace Docket No. 21–ASW–23 (87 FR 51870; August 24, 2022)

Correction

a. On page 51870, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 51870, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 51870, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 51871, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

24. For Docket No. FAA–2022–0568; Airspace Docket No. 22–ASO–12 (87 FR 52332; August 25, 2022)

Correction

a. On page 52332, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52333, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52333, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 52333, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 52333, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

25. For Docket No. FAA–2022–0668; Airspace Docket No. 22–ASO–13 (87 FR 52333; August 25, 2022)

Correction

a. On page 52334, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52334, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO

7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

c. On page 52334, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

d. On page 52334, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

26. For Docket No. FAA–2022–0715; Airspace Docket No. 22–ASW–13 (87 FR 52437; August 26, 2022)

Correction

a. On page 52437, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52437, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52437, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52438, column 1 and column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

27. For Docket No. FAA–2022–0775; Airspace Docket No. 22–ASW–15 (87 FR 52438; August 26, 2022)

Correction

a. On page 52438, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52438, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52438, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 524389, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

28. For Docket No. FAA–2022–0714; Airspace Docket No. 22–AGL–23 (87 FR 52439; August 26, 2022)

Correction

a. On page 52439, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52440, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52440, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52440, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

29. For Docket No. FAA–2022–0788; Airspace Docket No. 22–ASO–14 (87 FR 52441; August 26, 2022)

Correction

a. On page 52441, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52441, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52441, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 52441, column 3, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

e. On page 52442, column 1, and column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

30. For Docket No. FAA–2022–0758; Airspace Docket No. 22–AGL–24 (87 FR 52442; August 26, 2022)

Correction

a. On page 52442, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52442, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52442, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52443, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

31. For Docket No. FAA–2021–1194; Airspace Docket No. 19–AAL–39 (87 FR 52665; August 29, 2022)

Correction

a. On page 52665, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52666, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52666, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52666, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

32. For Docket No. FAA–2021–1156; Airspace Docket No. 19–AAL–28 (87 FR 52667; August 29, 2022)

Correction

a. On page 52667, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52667, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52667, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52668, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

33. For Docket No. FAA–2021–1163; Airspace Docket No. 19–AAL–38 (87 FR 52668; August 29, 2022)

Correction

a. On page 52668, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52668, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52668, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52669, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

34. For Docket No. FAA–2021–0857; Airspace Docket No. 19–AAL–51 (87 FR 52669; August 29, 2022)

Correction

a. On page 52669, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52670, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52670, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52670, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective

September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

35. For Docket No. FAA–2021–1080; Airspace Docket No. 21–AGL–33 (87 FR 52672; August 29, 2022)

Correction

a. On page 52672, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52672, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52672, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52672, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

36. For Docket No. FAA–2021–1100; Airspace Docket No. 19–AAL–65 (87 FR 52673; August 29, 2022)

Correction

a. On page 52673, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52673, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52673, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52674, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

37. For Docket No. FAA–2021–0860; Airspace Docket No. 19–AAL–54 (87 FR 52674; August 29, 2022)

Correction

a. On page 52674, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52674, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52675, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52675, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

38. For Docket No. FAA–2022–0026; Airspace Docket No. 21–AAL–68 (87 FR 52676; August 29, 2022)

Correction

a. On page 52676, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 52676, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 52676, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 52677, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

39. For Docket No. FAA–2022–0766; Airspace Docket No. 22–AGL–25 (87 FR 53656; September 1, 2022)

Correction

a. On page 53656, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 53656, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 53656, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO

7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

e. On page 53657, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

40. For Docket No. FAA–2022–0545; Airspace Docket No. 22–AEA–9 (87 FR 54137; September 2, 2022)

Correction

a. On page 54137, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54138, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

c. On page 54138, column 1, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

d. On page 54138, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

41. For Docket No. FAA–2022–0661; Airspace Docket No. 22–AEA–10 (87 FR 54139; September 2, 2022)

Correction

a. On page 54139, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54139, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54139, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

d. On page 54139, column 2, under The Rule, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

§ 71.1 [Corrected]

f. On page 54139, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

42. For Docket No. FAA–2022–0475; Airspace Docket No. 21–AEA–16 (87 FR 54360; September 6, 2022)

Correction

a. On page 54360, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54361, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54361, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 54361, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

43. For Docket No. FAA–2022–0646; Airspace Docket No. 21–AEA–17 (87 FR 54878; September 8, 2022)

Correction

a. On page 54878, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54879, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54879, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 54880, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

44. For Docket No. FAA–2022–0827; Airspace Docket No. 21–AEA–12 (87 FR 54880; September 8, 2022)

Correction

a. On page 54880, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54880, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G,

dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54881, column 1, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

e. On page 54882, column 1, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

45. For Docket No. FAA–2022–0823; Airspace Docket No. 21–AEA–23 (87 FR 54882; September 8, 2022)

Correction

a. On page 54882, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54882, column 3, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54883, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 54883, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

46. For Docket No. FAA–2022–0026; Airspace Docket No. 21–AA:–68 (87 FR 54883; September 8, 2022)

Correction

a. On page 54883, column 3, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54884, column 1, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

47. For Docket No. FAA–2022–0824; Airspace Docket No. 21–ASO–33 (87 FR 54884; September 8, 2022)

Correction

a. On page 54884, column 2, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 54884, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 54884, column 3, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

d. On page 54885, column 3, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

47. For Docket No. FAA–2022–0774; Airspace Docket No. 22–AGL–26 (87 FR 55683; September 12, 2022)

Correction

a. On page 55683, column 1, under **ADDRESSES**, ''. . . FAA Order JO 7400.11F . . .'' is corrected to read ''. . . FAA Order JO 7400.11G . . .''.

b. On page 55683, column 2, under History, ''. . . FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022 . . .''.

c. On page 55683, column 2, under Availability and Summary of Documents for Incorporation by Reference, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''; and two other instances of ''FAA Order JO 7400.11F . . .'' are corrected to read ''FAA Order JO 7400.11G . . .''.

§ 71.1 [Corrected]

e. On page 55684, column 2, under Amendatory Instruction 2, ''. . . FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, . . .'' is corrected to read ''. . . FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, . . .''.

Issued in Washington, DC, on, October 27, 2022.

Mark E. Gauch,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2022–23764 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. OAG 179; AG Order No. 5524–2022]

Policy Regarding Obtaining Information From or Records of Members of the News Media; and Regarding Questioning, Arresting, or Charging Members of the News Media

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations setting forth the policy of the Department of Justice regarding the use of compulsory legal process, including subpoenas, search warrants, and certain court orders for the purpose of obtaining information from or records of members of the news media. The rule

also amends the Department's regulations establishing its policy regarding questioning, arresting, or charging members of the news media.

DATES: This rule is effective on November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Ashley Dugger, Acting Director, Office of Enforcement Operations, Criminal Division, (202) 514–6809.

SUPPLEMENTARY INFORMATION:

Discussion

On July 19, 2021, the Attorney General issued a memorandum revising the Department's policy regarding the use of compulsory legal process for the purpose of obtaining information from or records of members of the news media. The memorandum asked the Deputy Attorney General to undertake a review process to further explain, develop, and codify in regulations the protections provided for in the memorandum. After the conclusion of that review and consultation with relevant internal and external stakeholders, the Attorney General is issuing this final rule to revise the existing provisions in the Department's regulations at 28 CFR 50.10.

The revisions replace the regulations' prior balancing test and codify the Attorney General's July 2021 directive that the Department of Justice will no longer use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering, except in limited circumstances. Other revisions are intended to clarify the scope of the policy, specify the approvals required in the circumstances in which compulsory legal process is allowed, tighten procedures for the review and safeguarding of information, and fill gaps in the previous regulations.

Regulatory Certifications

Administrative Procedure Act, 5 U.S.C. 553

Because, for purposes of the Administrative Procedure Act, this regulation concerns general statements of policy, or rules of agency organization, procedure, or practice, notice and comment and a delayed effective date are not required. See 5 U.S.C. 553(b)(A), (d).

Regulatory Flexibility Act

Because this final rule is not promulgated as a final rule under 5 U.S.C. 553 and was not required under that section to be published as a proposed rule, the requirements for the preparation of a regulatory flexibility analysis under 5 U.S.C. 604(a) do not apply. In any event, the Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains to administrative matters affecting the Department.

Executive Orders 12866 and 13563—Regulatory Planning and Review

This action has been drafted and reviewed in accordance with Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, section 1(b), Principles of Regulation.

This rule is limited to agency organization, management, or personnel matters as described by section 3(d)(3) of Executive Order 12866, and therefore is not a ''regulation'' as defined by that Executive order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 of February 5, 1996.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 of August 4, 1999, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, Public Law 104–4.

Congressional Review Act

This action pertains to agency management and does not substantially affect the rights or obligations of non-agency parties; accordingly, this action is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Crime, Media, News, Search warrants, Subpoena.

Accordingly, for the reasons stated in the preamble, part 50 of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

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

Authority: 5 U.S.C. 301; 18 U.S.C. 1162; 28 U.S.C. 509, 510, 516, and 519; 42 U.S.C. 1921 *et seq.,* 1973c; and Pub. L. 107–273, 116 Stat. 1758, 1824.

■ 2. Section 50.10 is revised to read as follows:

§ 50.10 Policy regarding obtaining information from or records of members of the news media; and regarding questioning, arresting, or charging members of the news media.

(a) *Statement of principles.* (1) A free and independent press is vital to the functioning of our democracy. Because freedom of the press can be no broader than the freedom of members of the news media to investigate and report the news, the Department's policy is intended to provide protection to members of the news media from certain law enforcement tools and actions, whether criminal or civil, that might unreasonably impair newsgathering. The policy is not intended to shield from accountability members of the news media who are subjects or targets of a criminal investigation for conduct outside the scope of newsgathering.

(2) The Department recognizes the important national interest in protecting journalists from compelled disclosure of information revealing their sources, sources they need to apprise the American people of the workings of their Government. For this reason, with the exception of certain circumstances set out in this section, the Department of Justice will not use compulsory legal process for the purpose of obtaining information from or records of members of the news media acting within the scope of newsgathering.

(3) In determining whether to seek, when permitted by this policy, information from or records of members of the news media, the Department must consider several vital interests: protecting national security, ensuring public safety, promoting effective law enforcement and the fair administration

of justice, and safeguarding the essential role of a free press in fostering Government accountability and an open society, including by protecting members of the news media from compelled disclosure of information revealing their sources. These interests have long informed the Department's view that the use of compulsory legal process to seek information from or records of non-consenting members of the news media constitutes an extraordinary measure, not a standard investigatory practice.

(b) *Scope and definitions*—(1) *Covered persons and entities.* The policy in this section governs the use of certain law enforcement tools and actions, whether criminal or civil, to obtain information from or records of members of the news media.

(2) *Definitions.* (i) *Compulsory legal process* consists of subpoenas, search warrants, court orders issued pursuant to 18 U.S.C. 2703(d) and 3123, interception orders issued pursuant to 18 U.S.C. 2518, civil investigative demands, and mutual legal assistance treaty requests—regardless of whether issued to members of the news media directly, to their publishers or employers, or to others, including third-party service providers of any of the forgoing, for the purpose of obtaining information from or records of members of the news media, and regardless of whether the compulsory legal process seeks testimony, physical or electronic documents, telephone toll or other communications records, metadata, or digital content.

(ii) *Newsgathering* is the process by which a member of the news media collects, pursues, or obtains information or records for purposes of producing content intended for public dissemination.

(A) Newsgathering includes the mere receipt, possession, or publication by a member of the news media of Government information, including classified information, as well as establishing a means of receiving such information, including from an anonymous or confidential source.

(B) Except as provided in paragraph (b)(2)(ii)(A) of this section, newsgathering does not include criminal acts committed in the course of obtaining information or using information, such as: breaking and entering; theft; unlawfully accessing a computer or computer system; unlawful surveillance or wiretapping; bribery; extortion; fraud; insider trading; or aiding or abetting or conspiring to engage in such criminal activities, with the requisite criminal intent.

(3) *Exclusions.* (i) The protections of the policy in this section do not extend to any person or entity where there is a reasonable ground to believe the person or entity is:

(A) A foreign power or agent of a foreign power, as those terms are defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801);

(B) A member or affiliate of a foreign terrorist organization designated under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(C) Designated as a Specially Designated Global Terrorist by the Department of the Treasury under Executive Order 13224 of September 23, 2001, 3 CFR, 2001 Comp., p. 786;

(D) A specially designated terrorist as that term is defined in 31 CFR 595.311;

(E) A terrorist organization as that term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi));

(F) Committing or attempting to commit a crime of terrorism, as that offense is described in 18 U.S.C. 2331(5) or 2332b(g)(5);

(G) Committing or attempting to commit the crimes of providing material support or resources to terrorists or designated foreign terrorist organizations, providing or collecting funds to finance acts of terrorism, or receiving military-type training from a foreign terrorist organization, as those offenses are defined in 18 U.S.C. 2339A, 2339B, 2339C, and 2339D; or

(H) Aiding, abetting, or conspiring in illegal activity with a person or organization described in paragraphs (b)(3)(i)(A) through (G) of this section.

(ii) The determination that an exclusion in paragraph (b)(3)(i) of this section applies must be made by the Assistant Attorney General for National Security.

(c) *Compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering.* Compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering is prohibited except under the circumstances set forth in paragraphs (c)(1) through (3) of this section. (Note that the prohibition in this paragraph (c) on using compulsory legal process applies when a member of the news media has, in the course of newsgathering, only received, possessed, or published government information, including classified information, or has established a means of receiving such information, including from an anonymous or confidential source.) The Department may only use compulsory legal process for the purpose of obtaining information from or records of a member of the news media acting within the scope of newsgathering, as follows:

(1) To authenticate for evidentiary purposes information or records that have already been published, in which case the authorization of a Deputy Assistant Attorney General for the Criminal Division is required;

(2) To obtain information or records after a member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed compulsory legal process, in which case authorization as described in paragraph (i) of this section is required; or

(3) When necessary to prevent an imminent or concrete risk of death or serious bodily harm, including terrorist acts, kidnappings, specified offenses against a minor (as defined in 34 U.S.C. 20911(7)), or incapacitation or destruction of critical infrastructure (as defined in 42 U.S.C. 5195c(e)), in which case the authorization of the Attorney General is required.

(d) *Compulsory legal process for the purpose of obtaining information from or records of a member of the news media not acting within the scope of newsgathering.* (1) The Department may only use compulsory legal process for the purpose of obtaining information from or records of a member of the news media who is not acting within the scope of newsgathering:

(i) When the member of the news media is the subject or target of an investigation and suspected of having committed an offense;

(ii) To obtain information or records of a non-member of the news media, when the non-member is the subject or target of an investigation and the information or records are in a physical space, device, or account shared with a member of the news media;

(iii) To obtain purely commercial, financial, administrative, technical, or other information or records unrelated to newsgathering; or for information or records relating to personnel not involved in newsgathering;

(iv) To obtain information or records related to public comments, messages, or postings by readers, viewers, customers, or subscribers, over which a member of the news media does not exercise editorial control prior to publication;

(v) To obtain information or records of a member of the news media who may be a victim of or witness to crimes or

other events, or whose premises may be the scene of a crime, when such status (as a victim or witness or crime scene) is not based on or within the scope of newsgathering; or

(vi) To obtain only subscriber and other information described in 18 U.S.C. 2703(c)(2)(A), (B), (D), (E), and (F).

(2) Compulsory legal process under paragraph (d)(1) of this section requires the authorization of a Deputy Assistant Attorney General for the Criminal Division, except that:

(i) To obtain information or records after a member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed compulsory legal process, such compulsory legal process requires authorization as described in paragraph (i) of this section governing voluntary questioning and compulsory legal process following consent by a member of the news media; and

(ii) To seek a search warrant for the premises of a news media entity requires authorization by the Attorney General.

(e) *Matters where there is a close or novel question as to the person's or entity's status as a member of the news media or whether the member of the news media is acting within the scope of newsgathering.* (1) When there is a close or novel question as to the person's or entity's status as a member of the news media, the determination of such status must be approved by the Assistant Attorney General for the Criminal Division.

(2) When there is a close or novel question as to whether the member of the news media is acting within the scope of newsgathering, the determination of such status must be approved by the Assistant Attorney General for the Criminal Division. When the Assistant Attorney General finds that there is genuine uncertainty as to whether the member of the news media is acting within the scope of newsgathering, the determination of such status must be approved by the Attorney General.

(f) *Compelled testimony.* (1) Except as provided in paragraph (f)(2) of this section, members of the Department must obtain the authorization of the Deputy Attorney General when seeking to compel grand jury or trial testimony otherwise permitted by this section from any member of the news media.

(2) When the compelled testimony under paragraph (f)(1) of this section has no nexus to the person's or entity's activities as a member of the news media, members of the Department must obtain the authorization of a Deputy Assistant Attorney General for the Criminal Division and provide prior notice to the Deputy Attorney General.

(3) Such authorization may only be granted when all other requirements of this policy regarding compulsory legal process have been satisfied.

(g) *Exhaustion.* (1) Except as provided in paragraph (g)(2) of this section, the official authorizing the compulsory legal process must find the following exhaustion conditions are met:

(i) The Government has exhausted all reasonable avenues to obtain the information from alternative, non-news-media sources.

(ii) The Government has pursued negotiations with the member of the news media in an attempt to secure the member of the news media's consent to the production of the information or records to be sought through compulsory legal process, unless the authorizing official determines that, for compelling reasons, such negotiations would pose a clear and substantial threat to the integrity of the investigation or pose the risks described in paragraph (c)(3) of this section. Where the nature of the investigation permits, the Government must have explained to the member of the news media the Government's need for the information sought in a particular investigation or prosecution, as well as its willingness or ability to address the concerns of the member of the news media.

(iii) The proposed compulsory legal process is narrowly drawn. It must be directed at material and relevant information regarding a limited subject matter, avoid interference with unrelated newsgathering, cover a reasonably limited period of time, avoid requiring production of a large volume of material, and give reasonable and timely notice of the demand as required by paragraph (j) of this section.

(2) When the process is sought pursuant to paragraph (d)(1), (i), or (l) of this section, the authorizing official is not required to find that the exhaustion conditions in paragraphs (g)(1)(i) and (ii) of this section have been satisfied, but should consider requiring those conditions as appropriate.

(h) *Standards for authorizing compulsory legal process.* (1) In all matters covered by this section, the official authorizing the compulsory legal process must take into account the principles set forth in paragraph (a) of this section.

(2) Except as provided in paragraph (h)(3) of this section, when the member of the news media is not the subject or target of an investigation and suspected of having committed an offense, the official authorizing the compulsory legal process must take into account the following considerations:

(i) In criminal matters, there must be reasonable grounds to believe, based on public information or information from non-news-media sources, that a crime has occurred, and that the information sought is essential to a successful investigation or prosecution. The compulsory legal process may not be used to obtain peripheral, nonessential, or speculative information.

(ii) In civil matters, there must be reasonable grounds to believe, based on public information or information from non-news-media sources, that the information sought is essential to the successful completion of the investigation or litigation in a case of substantial importance. The compulsory legal process may not be used to obtain peripheral, nonessential, cumulative, or speculative information.

(3) When paragraph (h)(2) of this section would otherwise apply, but the compulsory legal process is sought pursuant to paragraph (i) or (l) of this section, the authorizing official is not required to, but should, take into account whether the information sought is essential to a successful investigation, prosecution, or litigation as described in paragraphs (h)(2)(i) and (ii) of this section.

(4) When the member of the news media is the subject or target of an investigation and suspected of having committed an offense, before authorizing compulsory legal process, the authorizing official is not required to, but should, take into account the considerations set forth in paragraphs (h)(2)(i) and (ii) of this section as appropriate.

(i) *Voluntary questioning and compulsory legal process following consent by a member of the news media.* (1) When the member of the news media is not the subject or target of an investigation and suspected of having committed an offense, authorization by a United States Attorney or Assistant Attorney General responsible for the matter must be obtained in order to question a member of the news media on a voluntary basis, or to use compulsory legal process if the member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed process. When there is any nexus to the person's activities as a member of the news media, such authorization must be preceded by consultation with the Criminal Division.

(2) When the member of the news media is the subject or target of an

investigation and suspected of having committed an offense, authorization by a Deputy Assistant Attorney General for the Criminal Division must be obtained in order to question a member of the news media on a voluntary basis, or to use compulsory legal process if the member of the news media agrees to provide or consents to the provision of the requested records or information in response to the proposed process.

(j) *Notice of compulsory legal process to the affected member of the news media.* (1) Members of the Department must provide notice to the affected member of the news media prior to the execution of authorized compulsory legal process under paragraph (c) of this section unless the authorizing official determines that, for compelling reasons, such notice would pose the risks described in paragraph (c)(3) of this section.

(2) Members of the Department must provide notice prior to the execution of compulsory legal process authorized under paragraphs (d)(1)(ii) through (vi) of this section to a member of the news media that is not the subject or target of an investigation and suspected of having committed an offense, unless the authorizing official determines that, for compelling reasons, such notice would pose a clear and substantial threat to the integrity of the investigation or would pose the risks described in paragraph (c)(3) of this section and so informs the Deputy Attorney General in advance.

(3) If the member of the news media has not been given notice under paragraph (j)(1) or (2) of this section, the United States Attorney or Assistant Attorney General responsible for the matter must provide notice to the member of the news media as soon as it is determined that such notice would no longer pose the concerns described in paragraph (j)(1) or (2) of this section, as applicable.

(4) In any event, such notice must be given to the affected member of the news media within 45 days of the Government's receipt of a complete return made pursuant to all forms of compulsory legal process included in the same authorizing official's authorization under paragraph (c) or (d)(1)(ii) through (vi) of this section, except that the authorizing official may authorize delay of notice for one additional 45-day period if the official determines that, for compelling reasons, such notice continues to pose the same concerns described in paragraph (j)(1) or (2) of this section, as applicable.

(5) Members of the Department are not required to provide notice to the affected member of the news media of compulsory legal process that was authorized under paragraph (d)(1)(i) of this section if the affected member of the news media is the subject or target of an investigation and suspected of having committed an offense.

(i) The authorizing official may nevertheless direct that notice be provided to the affected member of the news media.

(ii) If the authorizing official does not direct that such notice be provided, the official must so inform the Deputy Attorney General, and members of the Department who are responsible for the matter must provide the authorizing official with an update every 90 days regarding the status of the investigation. That update must include an assessment of any harm to the investigation that would be caused by providing notice to the member of the news media. The authorizing official will consider such update in determining whether to direct that notice be provided.

(6) Notice under the policy in this section may be given to the affected member of the news media or a current employer of that member if that employer is also a member of the news media.

(7) A copy of any notice to be provided to a member of the news media shall be provided to the Director of the Office of Public Affairs and to the Director of the Criminal Division's Office of Enforcement Operations at least 10 business days before such notice is provided, and immediately after such notice is provided to the member of the news media.

(k) *Non-disclosure orders.* (1) In seeking authorization to use compulsory legal process to obtain information from or the records of a member of the news media, members of the Department must indicate whether they intend to seek an order directing the recipient of the compulsory legal process not to disclose the existence of the compulsory legal process to any other person or entity and shall articulate the need for such non-disclosure order.

(2) An application for a non-disclosure order sought in connection with compulsory legal process under paragraph (c) of this section may only be authorized if the authorizing official determines that, for compelling reasons, disclosure would pose the risks described in paragraph (c)(3) of this section and the application otherwise complies with applicable statutory standards and Department policies.

(3) An application for a non-disclosure order sought in connection with compulsory legal process under paragraphs (d)(1)(ii) through (vi) of this section regarding a member of the news media that is not the subject or target of an investigation and suspected of having committed an offense may only be authorized if the authorizing official determines that, for compelling reasons, disclosure would pose a clear and substantial threat to the integrity of the investigation or would pose the risks described in paragraph (c)(3) of this section and the application otherwise complies with applicable statutory standards and Department policies.

(4) An application for a non-disclosure order sought in connection with compulsory legal process under paragraph (d)(1)(i) of this section regarding a member of the news media that is a subject or target of an investigation and suspected of having committed an offense may be authorized if the application otherwise complies with applicable statutory standards and Department policies.

(5) Members of the Department must move to vacate any non-disclosure order when notice of compulsory legal process to the affected member of media is required (after any extensions permitted) by paragraph (j) of this section.

(l) *Exigent circumstances involving risk of death or serious bodily harm.* (1) A Deputy Assistant Attorney General for the Criminal Division may authorize the use of compulsory legal process that would otherwise require authorization from the Attorney General or the Deputy Attorney General if the Deputy Assistant Attorney General for the Criminal Division determines that:

(i) The exigent use of such compulsory legal process is necessary to prevent the risks described in paragraph (c)(3) of this section; and

(ii) Those exigent circumstances require the use of such compulsory legal process before the authorization of the Attorney General or the Deputy Attorney General can, with due diligence, be obtained.

(2) In authorizing the exigent use of compulsory legal process, a Deputy Assistant Attorney General for the Criminal Division should take into account the principles set forth in paragraph (a) of this section; ensure that the proposed process is narrowly tailored to retrieve information or records required to prevent or mitigate the associated imminent risk; and require members of the Department to comply with the safeguarding protocols described in paragraph (p) of this section.

(3) As soon as possible after the approval by a Deputy Assistant Attorney General for the Criminal Division of a request under paragraph (l)(1) of this section, the Deputy Assistant Attorney General must provide notice to the

designated authorizing official, the Deputy Attorney General, and the Director of the Office of Public Affairs. Within 10 business days of the authorization under paragraph (l)(1) of this section, the United States Attorney or Assistant Attorney General responsible for the matter shall provide a statement to the designated authorizing official containing the information that would have been provided in a request for prior authorization.

(m) *Arresting or charging a member of the news media.* (1) Except as provided in paragraph (m)(2) of this section or in circumstances in which prior authorization is not possible, members of the Department must obtain the authorization of the Deputy Attorney General to seek a warrant for an arrest, conduct an arrest, present information to a grand jury seeking a bill of indictment, or file an information against a member of the news media.

(2) Except in circumstances in which prior authorization is not possible, when the arrest or charging of a member of the news media under paragraph (m)(1) of this section has no nexus to the person's or entity's activities as a member of the news media, members of the Department must obtain the authorization of a Deputy Assistant Attorney General for the Criminal Division and provide prior notice to the Deputy Attorney General.

(3) When prior authorization was not possible, the member of the Department must ensure that the designated authorizing official is notified as soon as possible.

(n) *Applications for authorizations under this section.* (1) Whenever any authorization is required under this section, the application must be personally approved in writing by the United States Attorney or Assistant Attorney General responsible for the matter.

(2) Whenever the authorizing official under this section is the Attorney General or the Deputy Attorney General, the application must also be personally approved in a memorandum by the Assistant Attorney General for the Criminal Division.

(3) The member of the Department requesting authorization must provide all facts and applicable legal authority necessary for the authorizing official to make the necessary determinations, as well as copies of the proposed compulsory legal process and any other related filings.

(4) Whenever an application for any authorization is made to the Attorney General or the Deputy Attorney General under this section, the application must also be provided to the Director of the Office of Public Affairs for consultation.

(o) *Filter protocols.* (1) In conjunction with the use of compulsory legal process, the use of filter protocols, including but not limited to keyword searches and filter teams, may be necessary to minimize the potential intrusion into newsgathering-related materials that are unrelated to the conduct under investigation.

(2) While the use of filter protocols should be considered in all matters involving a member of the news media, the use of such protocols must be balanced against the need for prosecutorial flexibility and the recognition that investigations evolve, and should be tailored to the facts of each investigation.

(3) Unless compulsory legal process is sought pursuant to paragraph (i) or (l) of this section, members of the Department must use filter protocols when the compulsory legal process relates to a member of the news media acting within the scope of newsgathering or the compulsory legal process could potentially encompass newsgathering-related materials that are unrelated to the conduct under investigation. The Attorney General or the Deputy Attorney General may waive the use of filter protocols only upon an express finding that there is a *de minimis* risk that newsgathering-related materials that are unrelated to the conduct under investigation would be obtained pursuant to the compulsory legal process and that any filter protocol would pose a substantial and unwarranted investigative burden.

(4) Members of the Department should consult the Justice Manual for guidance regarding the use of filter protocols to protect newsgathering-related materials that are unrelated to the conduct under investigation.

(p) *Safeguarding.* Any information or records that might include newsgathering-related materials obtained from a member of the news media or from third parties pursuant to the policy in this section must be closely held so as to prevent disclosure of the information to unauthorized persons or for improper purposes. Members of the Department must consult the Justice Manual for specific guidance regarding the safeguarding of information or records obtained from a member of the news media or from third parties pursuant to this section and regarding the destruction and return of information or records as permitted by law.

(q) *Privacy Protection Act.* All authorizations pursuant to this section must comply with the provisions of the Privacy Protection Act (PPA), 42 U.S.C. 2000aa(a) *et seq.* Members of the Department must consult the Justice Manual for specific guidance on complying with the PPA. Among other things, members of the Department are not authorized to apply for a warrant to obtain work product materials or other documentary materials of a member of the news media under the PPA suspect exception, see 42 U.S.C. 2000aa(a)(1) and (b)(1), if the sole purpose is to further the investigation of a person other than the member of the news media.

(r) *Anti-circumvention.* Members of the Department shall not direct any third party to take any action that would violate a provision of this section if taken by a member of the Department.

(s) *Failure to comply.* Failure to obtain the prior authorization required by this section may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

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

Dated: October 26, 2022.

Merrick B. Garland,

Attorney General.

[FR Doc. 2022–23679 Filed 11–2–22; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2022–0728]

Special Local Regulations; Englewood Beach Waterfest; Gulf of Mexico; Englewood, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a special local regulation during the Englewood Beach Waterfest. During the enforcement period, all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the

Captain of the Port St. Petersburg or a designated representative.

DATES: The regulations in 33 CFR 100.703 will be enforced daily from 8 a.m. until 6 p.m., on November 18, 2022 through November 20, 2022, for the location identified in Item 8 in Table 1 to § 100.703.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Marine Science Technician Second Class Regina Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.703, Table 1 to § 100.703, Item No. 8, for the Englewood Beach Waterfest regulated area from 8 a.m. until 6 p.m., on November 18, 2022 through November 20, 2022. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events, Sector St. Petersburg, § 100.703, Table 1 to § 100.703, Item No. 8, specifies the location of the regulated area for the Englewood Beach Waterfest, which encompasses portions of the Gulf of Mexico near Englewood, FL. During the enforcement period, all persons and vessels, except those persons and vessels participating in the high speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area without obtaining permission from the Captain of the Port St. Petersburg or a designated representative.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, or both.

Dated: October 25, 2022.

Michael P. Kahle,

Captain, U.S. Coast Guard, Captain of the Port St. Petersburg.

[FR Doc. 2022–23955 Filed 11–2–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221026–0227; RTID 0648–XC411]

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish Fishery; Final 2022 and 2023 and Projected 2024 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements specifications for the 2022 and 2023 blueline tilefish fishery north of the North Carolina/Virginia border and projected specifications for 2024. This action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. It is also intended to inform the public of the final specifications for the 2022 fishing year (January 1, 2022 through December 31, 2022) and the 2023 fishing year (January 1, 2023 through December 31, 2023), and projected specifications for 2024.

DATES: This rule is effective December 5, 2022.

ADDRESSES: Copies of the Supplemental Information Report (SIR) prepared for this action, and other supporting documents for these proposed specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the blueline tilefish fishery north of the North Carolina/Virginia border under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. The South Atlantic Fishery Management Council manages Blueline tilefish south of the North Carolina/Virginia border under the Snapper Grouper FMP.

The Tilefish FMP requires the Mid-Atlantic Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures for the commercial and recreational sectors of the fishery, for up to three years at a time. The Council's Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. We are responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following review, NMFS publishes the final specifications in the **Federal Register**.

In 2017, a benchmark assessment of the blueline tilefish population along the entire East Coast was conducted through the Southeast Data, Assessment, and Review process (SEDAR 50). Due to data limitations, the coast-wide population was modeled separately north and south of Cape Hatteras, NC. To assist in developing a recommendation for acceptable biological catch (ABC), the Mid- and South Atlantic Councils' SSCs, as well as staff from the Northeast and Southeast Fisheries Science Centers, formed a joint subcommittee to examine available information for the region north of Cape Hatteras, and to develop separate catch advice for each Council's jurisdiction.

At its March 2018 meeting, the Mid-Atlantic SSC reviewed the output from the SEDAR 50 benchmark stock assessment as well as additional work using the Data-Limited Methods Toolkit (DLMTool) and derived an ABC recommendation using the Mid-Atlantic Council's risk policy. The resulting ABC was 179,500 lb (81.4 mt) for 2019–2021 for the region north of Cape Hatteras. The SSC then followed the recommendation of the Joint Mid- and South Atlantic Blueline Tilefish Subcommittee to distribute 56 percent of that ABC to the Mid-Atlantic Council (north of the VA/NC border) and 44 percent to the South Atlantic Council. This percentage breakdown is based on the catch distribution from the 2017 Pilot Blueline Tilefish Longline Survey.

At its March 2022 meeting, the Mid-Atlantic SSC used the 2018 approach to recommend a status quo ABC of 100,520 lb (45.6 mt) for the 2022–2024 fishing years for the region north of Cape Hatteras. The SSC made this recommendation under consideration of recent fishery performance, lack of an updated assessment, the need to synchronize the Mid-Atlantic specifications cycle with a SEDAR assessment scheduled for 2024/2025, and the high degree of uncertainty within the recreational sector. Final 2022 and 2023 and projected 2024 specifications are shown below in Table 1. We will reaffirm the 2024 final specifications via publication in the **Federal Register**.

TABLE 1—FINAL 2022 AND 2023 AND PROJECTED 2024 BLUELINE TILEFISH SPECIFICATIONS

	Final 2022	Final 2023	Projected 2024
ABC—North of NC/VA line	100,520 lb (45.6 mt)	100,520 lb (45.6 mt)	100,520 lb (45.6 mt).
Recreational ACL/ACT	73,380 (33.3 mt)	73,380 (33.3 mt)	73,380 (33.3 mt).
Commercial ACL/ACT	27,140 lb (12.3 mt)	27,140 lb (12.3 mt)	27,140 lb (12.3 mt).
Recreational TAL	71,912 lb (32.6 mt)	71,912 lb (32.6 mt)	71,912 lb (32.6 mt).
Commercial TAL	26,869 lb (12.2 mt)	26,869 lb (12.2 mt)	26,869 lb (12.2 mt).

There were no other recommended changes to commercial or recreational management measures. The 2022 fishing year began on January 1, 2022, and the fishery is operating under a rollover provision. The 2023 fishing year will begin on January 1, 2023.

On August 2, 2022, we published a proposed rule (87 FR 47181) requesting comment on the 2022–2024 blueline tilefish specifications. The comment period was open through August 17, 2022. We did not receive any comments and no changes were made from the proposed action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Council prepared a Supplemental Information Report (SIR) for this action and the AA concluded that that the modifications and their impacts make no substantial changes relevant to environmental concerns considered and analyzed in the original Environmental Assessment prepared for the 2019–2021 Blueline tilefish specifications. The management measures are status quo from the 2019–2021 specifications. A copy of the SIR is available from the Council (see **ADDRESSES**).

This final rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–23956 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 212
Thursday, November 3, 2022

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

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[Docket No. FWS–HQ–MB–2022–0090; FF09M30000–223–FXMB1231099BPP0]

RIN 1018–BF64

Migratory Bird Hunting; Proposed 2023–24 Migratory Game Bird Hunting Regulations (Preliminary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) proposes to establish annual hunting regulations for certain migratory game birds for the 2023–24 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule and describes the proposed regulatory alternatives for the 2023–24 general duck seasons and preliminary proposals that vary from the 2022–23 hunting season regulations. Migratory bird hunting seasons provide opportunities for recreation and sustenance; aid Federal, State, and Tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory game bird population status and habitat conditions.

DATES: *Comments:* You may comment on the general duck season regulatory alternatives and other preliminary proposals for the 2023–24 season until December 5, 2022.

ADDRESSES: *Comments:* You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–MB–2022–0090.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–HQ–MB–2022–0090; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept emailed or faxed comments. We will post all comments on *https://www.regulations.gov.* This generally means that your entire submission—including any personal identifying information—will be posted on the website. See Public Comments, below, for more information.

FOR FURTHER INFORMATION CONTACT: Jerome Ford, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2606. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION:

Promulgating Annual Migratory Game Bird Hunting Regulations

This proposed rule is the first in a series of proposed and final rules that establish regulations for the 2023–24 migratory bird hunting season. As part of the Department of the Interior's 2015 retrospective regulatory review, we changed our process for developing migratory game bird hunting regulations with the goal of enabling the State agencies to select and publish their season dates earlier than was allowed under the prior process. We provided a detailed overview of this process in the August 6, 2015, **Federal Register** (80 FR 47388).

Background

Migratory game birds are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Under the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703–712), the Secretary of the Interior is authorized to determine when ''hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg'' of migratory game birds can take place, and to adopt regulations for this purpose (16 U.S.C. 704(a)). These regulations are written after giving due regard to ''the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds'' (16 U.S.C. 704(a)) and are updated annually. This responsibility has been delegated to the Service as the lead Federal agency for managing and conserving migratory birds in the United States. However, migratory bird management is a cooperative effort of Federal, State, and Tribal governments.

The Service annually develops migratory game bird hunting regulations by establishing the frameworks, or outside limits, for season dates, season lengths, shooting hours, bag and possession limits, and areas where migratory game bird hunting may occur. These frameworks are necessary to allow harvest at levels compatible with migratory game bird population status and habitat conditions.

Acknowledging regional differences in hunting conditions, the Service has administratively divided the United States into four Flyways for the primary purpose of managing migratory game birds. Each Flyway (Atlantic, Mississippi, Central, and Pacific) has a Flyway Council, a formal organization generally composed of one member from each State within the Flyway, as well as Provinces in Canada that share migratory bird populations with the Flyway. The Flyway Councils, established through the Association of Fish and Wildlife Agencies, also assist in researching and providing migratory game bird management information for Federal, State, Tribal, and Provincial governments, as well as private conservation entities and the general public.

Overview of the Rulemaking Process

The process for adopting migratory game bird hunting regulations, which are set forth in title 50 of the Code of Federal Regulations in part 20 (50 CFR part 20), is constrained by three primary factors. Legal and administrative considerations dictate how long the rulemaking process will last. Most importantly, however, the biological cycle of migratory game birds controls the timing of data-gathering activities and thus the dates on which these results are available for consideration and deliberation.

For the regulatory cycle, Service biologists gather, analyze, and interpret biological survey data and provide this information to all those involved in the

process through a series of published status reports and presentations to Flyway Councils and other interested parties. Because the Service is required to take abundance of migratory game birds and other factors into consideration, the Service undertakes a number of surveys throughout the year in conjunction with Service Regional Offices, the Canadian Wildlife Service, and State and Provincial wildlife-management agencies. To determine the appropriate date limits for hunting seasons (which we refer to as frameworks) for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, condition of breeding and wintering habitat, number of hunters, and anticipated harvest. After the frameworks are established, States may select migratory game bird hunting seasons within the Federal frameworks. States may always be more conservative in their selections than the Federal frameworks, but never more liberal.

We annually publish definitions of flyways and management units and a description of the data used in and the factors affecting the regulatory process. This information will be included in proposed and final rules later in the regulations-development process (see 87 FR 5946, February 2, 2022, for the latest definitions and descriptions).

Service Regulations Committee Meetings

Per the regulations at 50 CFR 20.153, the Service Regulations Committee conducted open meetings in April and October 2022 to discuss preliminary issues for the 2023–24 regulations, review information on the current status of migratory game birds and develop recommendations for 2023–24 regulations for these species. These meetings were open to public observation, and official transcripts will soon be available at *https://www.regulations.gov* in Docket No. FWS–HQ–MB–2022–0090. You may submit written comments to the Service on the matters discussed. See **DATES** and **ADDRESSES** for information about submitting comments.

Rulemaking Process for the 2023–24 Season

This document is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. This document announces our intent to establish open hunting seasons for certain designated groups or species of migratory game birds for 2023–24 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20. For the 2023–24 migratory game bird hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, and gallinules); and Scolopacidae (woodcock and snipe).

The proposed regulatory alternatives for the 2023–24 duck hunting seasons are contained at the end of this document. We will publish additional proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available. Major steps in the 2023–24 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the diagram at the end of this proposed rule. All publication dates of **Federal Register** documents are target dates. Our goal is to publish final regulatory alternatives for duck seasons in fall 2022, proposed season frameworks in winter 2022, and final season frameworks near the end of February 2023.

Subject Matter Organization

Sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
   - A. General Harvest Strategy
   - B. Regulatory Alternatives
   - C. Zones and Split Seasons
   - D. Special Seasons/Species Management
   - i. Early Teal Seasons
   - ii. Early Teal/Wood Duck Seasons
   - iii. Black Ducks
   - iv. Canvasbacks
   - v. Pintails
   - vi. Scaup
   - vii. Mottled Ducks
   - viii. Wood Ducks
   - ix. Eastern mallards
   - x. Youth and Veterans—Active Military Personnel Hunting Days
   - xi. Mallard Management Units
   - xii. Other
2. Sea Ducks
3. Mergansers
4. Canada Geese
   - A. Special Early Seasons
   - B. Regular Seasons
   - C. Special Late Seasons
5. White-Fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots
11. Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Doves
17. Alaska
18. Hawaii
19. Puerto Rico
20. Virgin Islands
21. Falconry
22. Other

This and subsequent documents will refer only to numbered items requiring attention. Because we will omit those items not requiring attention, the remaining numbered items may be discontinuous and the list may appear incomplete.

The proposed regulatory alternatives for the 2023–24 duck hunting seasons are contained at the end of this document. We plan to publish the proposed season frameworks in late fall 2022 and final season frameworks in late-winter 2022.

Tribal Regulations

As part of this rulemaking improvement process, we will develop regulations pertaining to Tribes differently than we have in the past. Since the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23459) to establish special migratory game bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to Tribal requests for our recognition of their reserved hunting rights, and for some Tribes, recognition of their authority to regulate hunting by both Tribal and nontribal members throughout their reservations. While in past years we solicited Tribal proposals in the documents, like this one, that initiated the rulemaking process for all migratory bird hunting regulations for a specific season, for the 2023–24 season we will handle Tribal regulations via a separate rulemaking process. For inquiries on Tribal guidelines, Tribes should contact the address indicated under **FOR FURTHER INFORMATION CONTACT**.

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding this proposed rule. We seek information and comments on the proposed regulatory alternatives for the

2023–24 general duck hunting seasons, other recommended changes or specific preliminary proposals that vary from the 2022–23 regulations, and issues requiring early discussion, action, or the attention of the States.

The Service believes that a 30-day comment period is warranted for this proposed rule as subsequent **Federal Register** documents will allow the public to submit comments on the overall hunting frameworks (see Schedule of Biological Information Availability, Regulations Meetings, and **Federal Register** Publications for the 2023–24 Hunting Season at the end of this proposed rule for further information). For each subsequent proposed rule associated with this rulemaking action, we will establish a specific comment period. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments we receive. We will summarize the comments received and publish responses to all proposals and written comments when we develop final frameworks for the 2023–24 season. Such comments, and any additional information we receive, may lead to final regulations that differ from the proposed rules.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. Finally, we will not consider mailed comments that are not postmarked by the date specified in **DATES**. We will post all comments in their entirety—including your personal identifying information—on *https://www.regulations.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Required Determinations

National Environmental Policy Act (NEPA) Consideration

The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (EIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses NEPA compliance by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376). We also address NEPA compliance for waterfowl hunting frameworks through the annual preparation of separate environmental assessments, the most recent being ''Duck Hunting Regulations for 2022–23,'' with its corresponding April 2022 finding of no significant impact. In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the person listed above under **FOR FURTHER INFORMATION CONTACT**.

Endangered Species Act Consideration

Before issuance of the 2023–24 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter ''the Act''), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or adversely modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under section 7 of the Act may cause us to change proposals in future supplemental proposed rulemaking documents.

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rulemaking action is economically significant because the annual migratory bird hunting regulations have an annual effect of $100 million or more on the economy.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

An economic analysis was prepared for the 2023–24 migratory bird hunting season. This analysis was based on data from the 2016 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (National Survey), the most recent year for which data are available. See discussion under Required Determinations, *Regulatory Flexibility Act,* below. This analysis estimated consumer surplus for three alternatives for duck hunting regulations. As defined by the U.S. Office of Management and Budget in Circular A–4, consumers' surplus is the difference between what a consumer pays for a unit of a good or service and the maximum amount the consumer would be willing to pay for that unit. The duck hunting regulatory alternatives are (1) issue restrictive regulations allowing fewer days than those issued during the 2022–23 season, (2) issue moderate regulations allowing more days than those in Alternative 1, and (3) issue liberal regulations similar to the regulations in the 2022–23 season. For the 2022–23 season, we chose Alternative 3, with an estimated consumer surplus across all flyways of $329 million. We also chose Alternative 3 for the 2009–10 through 2021–22 seasons. The 2023–24 analysis is part of the record for this rulemaking action and is available at *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

Regulatory Flexibility Act

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis was prepared to analyze the economic impacts of the annual hunting regulations on small business entities. This analysis is updated annually. The primary source of information about hunter expenditures for migratory game bird hunting is the National Survey,

which is generally conducted at 5-year intervals. The 2022 analysis is based on the 2016 National Survey and the U.S. Department of Commerce's County Business Patterns, from which it is estimated that migratory bird hunters would spend approximately $2.2 billion at small businesses in 2022. Copies of the analysis are available upon request from the person listed above under **FOR FURTHER INFORMATION CONTACT** or from *https://www.regulations.gov* at Docket No. FWS–HQ–MB–2022–0090.

Small Business Regulatory Enforcement Fairness Act

Pursuant to subtitle E of the Small Business Regulatory Enforcement Fairness Act (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.,* OIRA designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of $100 million or more. However, because this rule would establish a regulatory program for activity related to hunting and because hunting seasons are time sensitive, we do not plan to defer the effective date under the exemption in the CRA, 5 U.S.C. 808(1).

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with migratory bird surveys and the procedures for establishing annual migratory bird hunting seasons under the following OMB control numbers:

- 1018–0019, ''North American Woodcock Singing Ground Survey'' (expires 02/29/2024).
- 1018–0023, ''Migratory Bird Surveys, 50 CFR 20.20'' (expires 04/30/2023). Includes Migratory Bird Harvest Information Program, Migratory Bird Hunter Surveys, Sandhill Crane Survey, and Parts Collection Survey.
- 1018–0171, ''Establishment of Annual Migratory Bird Hunting Seasons, 50 CFR part 20'' (expires 10/31/2024).

You may view the information collection request(s) at *https://www.reginfo.gov/public/do/PRAMain.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.,* that this proposed rulemaking does not include any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted for inflation) in any one year and does not significantly or uniquely affect small governments.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment—Executive Order 12630

In accordance with E.O. 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule would allow hunters to exercise otherwise unavailable privileges and, therefore, would reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

E.O. 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. While this proposed rule is a significant regulatory action under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy and has not been designated by OIRA as a significant energy action. Therefore, no statement of energy effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are de minimis effects on Indian trust resources. Through this process to establish annual hunting regulations, we regularly coordinate with Tribes that are affected by this rulemaking action. As noted previously, for the 2023–24 season, we will handle Tribal regulations via a separate rulemaking in later **Federal Register** documents.

Federalism Effects—Executive Order 13132

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive in its regulations than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, these regulations do not have federalism implications and do not warrant the preparation of a federalism summary impact statement.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority

The rules that eventually will be promulgated for the 2023–24 hunting season are authorized under 16 U.S.C. 703–711, 712, and 742 a–j.

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 2023–24 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific regulatory proposals. Issues requiring early discussion, action, or the attention of the States or Tribes are described below.

1. Ducks

As mentioned earlier in this document, the categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. Only those categories containing substantial recommendations are discussed below.

A. General Harvest Strategy

We will continue to use adaptive harvest management (AHM) to help determine appropriate duck-hunting regulations for the 2023–24 season. AHM is a tool that permits sound resource decisions in the face of uncertain regulatory impacts and provides a mechanism for reducing that uncertainty over time. We use an AHM protocol (decision framework) to evaluate four regulatory alternatives, each with a different expected harvest level, and choose the optimal regulation for duck hunting based on the status and demographics of mallards for the Mississippi, Central, and Pacific Flyways, and based on the status and demographics of a suite of four species (eastern waterfowl) in the Atlantic Flyway. We have specific AHM protocols that guide appropriate bag limits and season lengths for species of special concern, including black ducks, scaup, pintails, and mallards in the Atlantic Flyway (eastern mallards), within the general duck season. These protocols use the same outside season dates and lengths as those regulatory alternatives for the 2023–24 general duck seasons.

For the 2023–24 hunting season, we will continue to use independent optimizations to determine the appropriate regulatory alternative for mallard stocks in the Mississippi, Central, and Pacific Flyways and for eastern waterfowl in the Atlantic Flyway. This means that we will develop regulations for mid-continent mallards, western mallards, and eastern waterfowl independently based on the breeding stock that contributes primarily to each Flyway. We detailed implementation of AHM protocols for mid-continent and western mallards in the July 24, 2008, **Federal Register** (73 FR 43290), and for eastern waterfowl in the September 21, 2018, **Federal Register** (83 FR 47868).

B. Regulatory Alternatives

The basic structure of the current regulatory alternatives for AHM was adopted in 1997. In 2002, based upon recommendations from the Flyway Councils, we extended framework dates in the ''moderate'' and ''liberal'' regulatory alternatives by changing the opening date from the Saturday nearest October 1 to the Saturday nearest September 24, and by changing the closing date from the Sunday nearest January 20 to the last Sunday in January. These extended dates were made available with no associated penalty in season length or bag limits. In 2018, we adopted a closing duck framework date of January 31 for the ''moderate'' and ''liberal'' alternatives in the Atlantic Flyway as part of the Atlantic Flyway's eastern waterfowl AHM protocol (83 FR 47868, September 21, 2018). We subsequently extended the framework closing date to January 31 across all four Flyways for the 2019–20 hunting season (84 FR 16152, April 17, 2019).

More recently, the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 (Pub. L. 116–9, Dingell Act) amended the Migratory Bird Treaty Act to establish that the closing framework date for duck seasons will be January 31, unless a flyway chooses an earlier closing date. Thus, in 2019, as directed by the Dingell Act, we adjusted the framework closing date under each regulatory alternative for all four Flyways to January 31 (84 FR 42996; August 19, 2019). In 2020, we agreed to move the opening framework date to 1 week earlier in the restrictive regulatory alternative for the Mississippi and Central Flyways beginning with the 2021–22 season based on their recommendations (85 FR 15870, March 19, 2020).

For the 2023–24 general duck season, we propose to use the same regulatory alternatives that are in effect for the 2022–23 season (see table at the end of this proposed rule for specifics of the regulatory alternatives). Alternatives are specified for each Flyway and are designated as ''RES'' for the restrictive, ''MOD'' for the moderate, and ''LIB'' for the liberal alternative. We plan to finalize AHM regulatory alternatives for the 2023–24 season in a supplemental proposed rule, which we plan to publish by late fall of 2022 (see Schedule of Biological Information Availability, Regulations Meetings, and **Federal Register** Publications for the 2023–24 Hunting Season at the end of this proposed rule for further information).

D. Special Seasons/Species Management

ix. Eastern Mallards

In 2019 when we implemented the AHM protocol for eastern waterfowl, there was concern about the adequacy of existing data and models to reflect the dynamics of mallards in the Atlantic flyway (eastern mallards). The protocol did not specifically address appropriate bag limits for mallards. Consequently, the Service and the Atlantic Flyway Council developed an interim harvest strategy for eastern mallards as detailed in the August 19, 2019, **Federal Register** (84 FR 42996). The interim strategy is based on a potential take limit analysis that determined a sustainable daily-bag limit assuming a 60-day general duck season. The result of the assessment prescribed a daily bag limit of two mallards, one of which could be female. The interim strategy had limited functionality in that it did not allow for changes in the daily bag limit in response to changes in eastern mallard abundance or the general duck season length determined by the eastern waterfowl AHM protocol. Thus, at the time of implementing the interim harvest strategy, the Service and Council agreed to develop a State-dependent harvest strategy that would determine the daily bag limit for eastern mallards based on the status of these birds.

The development of the State-dependent eastern mallard harvest strategy has now been completed, and we propose to adopt it in place of the interim harvest strategy beginning with the 2023–24 season.

The new eastern mallard harvest strategy is the result of 3 years of technical work and policy decisions developed and agreed upon by the Service and State agencies in the

Atlantic Flyway. The goals of the eastern mallard harvest strategy are to: (1) maintain the eastern mallard stock at sustainable levels, and (2) provide consumptive and nonconsumptive uses indefinitely. The harvest strategy is based on an integrated population model that uses current data and understanding of system dynamics. The new harvest strategy is an improvement over the interim strategy because it allows the Service to make more informed harvest management decisions based on the current status of the resource and uncertainty, including the effects of harvest on mallard survival. The harvest strategy will be reviewed and revised as necessary on an approximately 5- to 10-year interval. A copy of the strategy is available at the address indicated under **FOR FURTHER INFORMATION CONTACT**, or at *https://www.regulations.gov,* or from our website at *https://www.fws.gov/media/eastern-mallard-adaptive-harvest-management-strategy-2022.*

xii. Other

Although not part of any current harvest management strategy, we propose to allow South Dakota and Nebraska to continue to conduct a pilot study during the 2023–24 duck season of a two-tier regulatory system as described in the March 19, 2020, proposed rule (85 FR 15870). This would be the second year of a planned 4-year pilot study. The intent of the two-tier license study is to evaluate whether regulations that relax hunters' requirement to identify duck species can improve waterfowl hunter recruitment and retention.[1] Declines in waterfowl hunter numbers have been of concern to the Service and the Flyway Councils, prompting the development of recruitment, retention, and reactivation (R3) efforts in the conservation community. The study would allow a person to obtain one of two license types during the duck season. The first license type would allow a daily bag limit as specified in the current duck regulations (six ducks), along with attendant species and sex restrictions. The second license type would allow a daily bag limit of only three ducks, but they could be of any species or sex. Additional years of study would be contingent on whether preliminary results from the first two duck seasons (2021–22 and 2022–23) warrant additional investigation. Memoranda of agreement between the Service and the two States specify the purpose of the study and the roles and responsibilities of each party while conducting the pilot study.

[1] The Service's primary goal is to ensure that waterfowl sport harvest management conforms to the MBTA and ensures the long-term conservation of bird populations. The various harvest strategies reflect this goal by ensuring that harvest does not exceed maximum sustainable yield (MSY). Secondarily to the MBTA, the Service has adopted policies to promote wildlife-based recreation, including migratory bird harvest. To the extent that management actions designed to promote hunter recruitment and retention do not result in harvest greater than the biological capacity of a population (*i.e.,* does not exceed MSY), the Service deems these actions to be in accordance with the MBTA. Management actions that result in harvest equal to or less than MSY will result in stable or increasing populations and provide consumptive and nonconsumptive uses indefinitely.

BILLING CODE 4333–15–P

PROPOSED REGULATORY ALTERNATIVES FOR THE 2023–24 GENERAL DUCK SEASONS

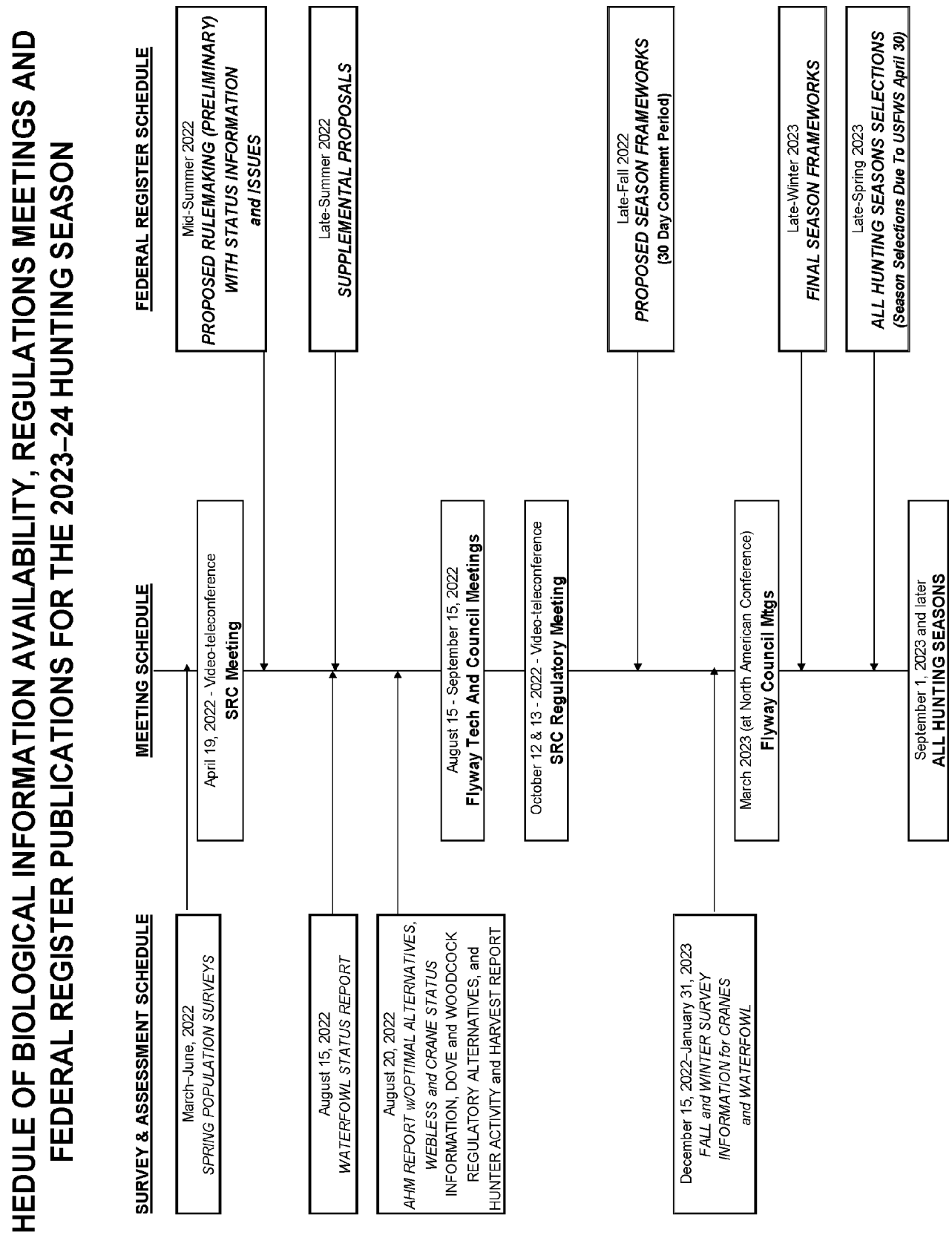
	ATLANTIC FLYWAY			MISSISSIPPI FLYWAY			CENTRAL FLYWAY (a)			PACIFIC FLYWAY (b)(c)		
	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB	RES	MOD	LIB
Beginning Shooting Time	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise	1/2 hr. before sunrise
Ending Shooting Time	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset	Sunset
Opening Date	Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Sept. 24	Sat. nearest Oct. 1	Sat. nearest Sept. 24	Sat. nearest Sept. 24
Closing Date	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31	Jan. 31
Season Length (in days)	30	45	60	30	45	60	39	60	74	60	86	107
Daily Bag	3	6	6	3	6	6	3	6	6	4	7	7
Species/Sex Limits within the Overall Daily Bag Limit												
Mallard (Total/Female)	(d)	(d)	(d)	2/1	4/1	4/2	3/1	5/1	5/2	3/1	5/2	7/2

(a) In the High Plains Mallard Management Unit, all regulations would be the same as the remainder of the Central Flyway, with the exception of season length. Additional days would be allowed under the various alternatives as follows: restrictive - 12, moderate and liberal - 23. Under all alternatives, additional days must be on or after the Saturday nearest December 10.

(b) In the Columbia Basin Mallard Management Unit, all regulations would be the same as the remainder of the Pacific Flyway, with the exception of season length. Under all alternatives except the liberal alternative, an additional 7 days would be allowed.

(c) In Alaska, framework dates, bag limits, and season length would be different from the remainder of the Pacific Flyway. The bag limit (depending on the area) would be 5-8 under the restrictive alternative, and 7-10 under the moderate and liberal alternatives. Under all alternatives, season length would be 107 days and framework dates would be Sep. 1–Jan. 26.

(d) Under the multi-stock AHM protocol for the Atlantic Flyway, the mallard bag limit is not prescribed by the regulatory alternative.



[FR Doc. 2022–23786 Filed 11–2–22; 8:45 am]
BILLING CODE 4333–15–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Chapter I

[Docket No. FWS–R7–EA–2022–0088; FF07X00000–FXGO16600700000–223]

Draft Alaska Native Relations Policy of the U.S. Fish and Wildlife Service

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Draft proposed policy; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are making available for public comment our draft Alaska Native Relations policy. The purpose of this policy is to build on the Service's existing Native American policy by providing additional clarity for employees on the Service's relationships with Tribes in Alaska, Alaska Native organizations, and Alaska Native corporations. We invite comments on the draft policy from State and Federal government agencies, federally recognized Tribal governments, inter-Tribal organizations, non-federally recognized Tribal governments, Alaska Native corporations, and the general public.

DATES: The Service will accept comments received or postmarked on or before December 5, 2022.

ADDRESSES:

Obtaining Documents: You may obtain copies of the draft policy online at *https://www.regulations.gov.* In the Search box, enter the docket number, which is FWS–R7–EA–2022–0088.

Submitting Comments: You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* In the Search box, enter the docket number, which is FWS–R7–EA–2022–0088. You may enter a comment by clicking on the ''Comment'' button. Please ensure that you have found the correct docket before submitting your comment.
- *U.S. Mail or Hand Delivery:* Public Comments Processing, Attn: Docket No. FWS–R7–EA–2022–0088; Policy and Regulations Branch; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Availability of Comments and Personal Information for more information).

FOR FURTHER INFORMATION CONTACT: Crystal Leonetti, Alaska Native Affairs Specialist, via email at *crystal_leonetti@fws.gov;* by U.S. mail at U.S. Fish and Wildlife Service, 1011 E Tudor Road, MS–101, Anchorage, AK 99503; or by telephone at (907) 230–8419. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), are making available for public comment our draft Alaska Native Relations policy. The purpose of the policy is to build on the Service's foundational Native American policy, and to serve as a framework for relationships and interactions between the Service and federally recognized Tribes in Alaska, Alaska Native organizations, and Alaska Native corporations, in order to conserve fish and wildlife and protect cultural resources. It will provide additional clarity for the Service on doctrines of reserved rights, statutes, case law, Executive Orders, and Secretarial Orders. The policy is intended to recognize the sovereignty of federally recognized Tribes in Alaska, direct that the Service work on a government-to-government basis with Tribal governments, and make clear that the Service has a unique relationship with Alaska Native organizations and Alaska Native corporations. The policy includes guidance on co-management, subsistence, resource management, capacity, law enforcement, and education.

This policy is not meant to stand on its own; when final, it will be part of the Service's existing Native American policy. We will incorporate it into part 510 of the Fish and Wildlife Service Manual as chapter 2.

To implement the Alaska Native Relations policy, in addition to drawing upon the overall Native American policy, the Service will use the U.S. Fish and Wildlife Service *Tribal Consultation Handbook* and carry out Alaska Native Relations training so that Service employees will be able to better perform duties related to this policy.

Draft Policy

We recognize that, when the Service and Indigenous peoples work together on stewarding the land and wildlife, our longstanding relationships are strengthened and resources are better stewarded. This policy will provide Service employees with guidance on recognition of the unique Alaska Native way of life, known in statute as ''subsistence living,'' and the Service's role in honoring those ecosystem relationships. The policy will provide Service employees with guidance when working with recognized Tribes in Alaska and Alaska Native organizations and corporations.

The proposed structure of the policy follows:

- Section 1 recognizes the unique relationship that Federal governmental agencies have with federally recognized Tribes. It identifies which statutes make specific provisions for Alaska Native peoples and ways of life that are integral to how the Service manages lands and species entrusted to our care. It explains why the Service has a unique relationship with Alaska Native corporations and organizations.
- Section 2 re-emphasizes the sovereignty of 229 Tribes in Alaska and the Service's government-to-government relationships with these Tribes.
- Section 3 describes communication, consultation, and information sharing between the Service and Tribes, Alaska Native organizations, and Alaska Native corporations.
- Section 4 sets out a range of collaborative management opportunities and establishes principles of co-management where Tribes and the Service have shared responsibility by statute, land management authority, and shared values.
- Section 5 recognizes the importance of Alaska Native peoples' traditional and spiritual ways of life, including recognition through the Alaska National Interest Lands Conservation Act.
- Section 6 presents guidance for Service law enforcement programs to work collaboratively with Tribes and Alaska Native organizations and corporations, which may include reviewing their draft regulatory language to ensure it is enforceable.
- Section 7 outlines some of the ways the Service supports Tribal, Alaska Native organization, and Alaska Native corporation capacity building and assistance.
- Section 8 commits the Service to offer training for employees that covers diverse topics such as Alaska Native history, Indigenous traditional ecological knowledge, and the laws that impact Alaska Native peoples. It encourages Service personnel to seek Alaska Native job applicants and facilitate opportunities for Alaska Native business partnerships.
- Section 9 describes the policy's scope and limitations.

- Exhibit 1 provides a glossary that supplements the glossary found in chapter 1 of the Service's Native American policy.
- Exhibit 2 describes the responsibilities of employees at all levels of the Service to carry out this policy.
- Exhibit 3 lists the authorities under which the Service may take the actions described in the policy.

Background and Development of the Draft Policy

On January 20, 2016, the Service adopted its updated Native American policy to guide the Service's government-to-government relations with federally recognized Tribal governments in conserving fish and wildlife resources and to ''help accomplish its mission and concurrently to participate in fulfilling the Federal Government's and Department of the Interior's trust responsibilities to assist Native Americans in protecting, conserving, and utilizing their reserved, treaty guaranteed, or statutorily identified trust assets.'' In order to update the Native American policy, in 2013 the Service had convened a Native American policy team to review the original 1994 policy. The team was comprised of Service representatives from its regions and programs and 16 self-nominated Tribal representatives from all of the major regions. As team discussions evolved, it became apparent that there was a large volume of Alaska-related exceptions to Native American policy, such as statutes guiding co-management relationships and subsistence on Federal lands. The exceptions called for a separate chapter on Alaska.

Representatives from the following Tribes, Alaska Native organizations, and Alaska Native corporations participated in a series of meetings with Service representatives to write the draft Alaska Native Relations policy chapter: Chugach Regional Resources Commission, Central Council of Tlingit and Haida Indian Tribes of Alaska, Ninilchik Tribal Council, Curyung Tribal Council, Native Village of Savoonga, Native Village of Afognak, Village of Wainwright, Ruby Tribal Council, Agdaagux Tribe of King Cove, Kwethluk, Inc., Doyon, Ltd., and Sealaska. The team used a consensus decision-making process. The team wrote the policy to mirror the existing Native American policy, so that each section of chapter 2 is parallel in structure to the corresponding section in chapter 1 and supplements chapter 1.

In April 2022, the Service invited federally recognized Tribal governments in Alaska, Alaska Native organizations, and Alaska Native corporations to consult on a draft of the new policy. Five Tribal government representatives, eight Alaska Native organization representatives, and seven Alaska Native corporation representatives attended consultation events via web broadcasts and telephone. The Service also received written comments from three Alaska Native organizations and one Alaska Native corporation to further develop and refine the draft Alaska Native Relations policy.

Request for Comments and Information

While this publication opens the 30-day public review and comment period, we also invite and encourage Tribes, Alaska Native organizations, and Alaska Native corporations to continue to review and submit comments within this review period. The Service's invitation to federally recognized Tribal governments to consult on a government-to-government basis regarding development of the Alaska Native Relations policy continues until the comment period closes (see **DATES**). Comments from local, State, and Federal government agencies; federally recognized Tribal governments; inter-Tribal organizations, non-federally recognized Tribal governments; Alaska Native corporations; and the general public are welcome.

Public Availability of Comments and Personal Information

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is found in the Alaska National Interest Lands Conservation Act of 1980, as amended (ANILCA; 16 U.S.C. 3101–3233), and the Alaska Native Claims Settlement Act, as amended (ANCSA; 43 U.S.C. 1601–1629h).

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on October 27, 2022, for publication. On October 31, 2022, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2022–23931 Filed 10–31–22; 4:45 pm]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 212
Thursday, November 3, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0060]

Notice of Request for an Extension of Approval of an Information Collection; Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the bovine and captive cervid tuberculosis regulations.

DATES: We will consider all comments that we receive on or before January 3, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0060 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the domestic tuberculosis program, contact Dr. Mark Lyons, Veterinary Medical Officer, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737; (614) 592–7954; email: *mark.a.lyons@usda.gov.* For more detailed information on the information collection, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator; (301) 851–2483; email: *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Control Number: 0579–0146.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests, and for conducting programs to detect, control, and eradicate pests and diseases of livestock. As part of this mission, APHIS participates in a national cooperative State/Federal tuberculosis eradication program to eliminate bovine tuberculosis in cattle, bison, and captive cervids from the United States. This program is conducted under various States' authorities supplemented by Federal authorities regulating the interstate movement of affected animals.

The tuberculosis regulations contained in 9 CFR part 77 provide for several levels of State tuberculosis risk classifications, the creation of tuberculosis risk status zones within the same State, and the testing of regulated animals before they are permitted to move interstate. The requirements for establishing zones and testing regulated animals enhance the effectiveness of APHIS' tuberculosis eradication program by decreasing the likelihood that infected animals will be moved interstate or internationally, thus preventing the spread of tuberculosis. The requirements also provide mechanisms to help APHIS' Veterinary Services trace, locate, and eradicate regulated animals when outbreaks occur.

The regulations require information collection activities that enhance APHIS' ability to allow U.S. animal producers to manage bovine and captive cervid tuberculosis and compete in the world market of animal and animal product trade. These information collection activities are memoranda of understanding for zone recognition; epidemiological reviews; permits for movement of restricted animals; certificates for animals moved interstate; retention of movement certificates; tuberculosis management plans; accredited herd plans; approved herd plans; test records and results; affected herd data and herd testing results; wildlife risk surveys; monthly reports of tuberculosis eradication; reports of tuberculosis lesions; specimen submissions and collections; submissions by States of requests to APHIS for State or zone status; submissions by States of an annual report to APHIS for renewal of State or zone status; commuter herd agreements; depopulation and repopulation agreements; extension requests; tuberculosis infected herd field reports; investigations for evidence of tuberculosis; appraisals and indemnity claims; records of proceeds from animals sold to slaughter; owner participation in new tuberculosis tests; recordkeeping for approved feedlots; and application of shipping labels.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.89 hours per response.

Respondents: State animal health officials, producers and owners (including feedlot owners), accredited veterinarians, professional appraisers, and laboratory technicians.

Estimated annual number of respondents: 1,053.

Estimated annual number of responses per respondent: 60.

Estimated annual number of responses: 63,205.

Estimated total annual burden on respondents: 56,036 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 26th day of October 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–23883 Filed 11–2–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next three months and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between October 1, 2022, and December 31, 2022; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since July 1, 2022.

ADDRESSES: Questions or comments may be submitted by email to the contact listed below.

FOR FURTHER INFORMATION CONTACT: JoLynn Anderson, 971–313–1718 or *jolynn.anderson@usda.gov.* Individuals who use telecommunications devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays. You may register to receive email alerts at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, Public Notice and Comment for Standards, Criteria and Guidance Applicable to Forest Service Programs, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The Forest Service has no proposed or interim directives planned for publication for public comment from October 1, 2022, to December 31, 2022.

Previously Published Directives That Have Not Been Finalized

The following proposed and interim directives have been published for public comment but have not yet been finalized:

1. FSM 2200, Rangeland Management, Chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, Chapters 10, Term Grazing Permits; 20, Grazing Agreements; 30, Temporary Grazing and Livestock Use Permits; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; 60, Records; 70, Compensation for Permittee Interests in Rangeland Improvements; 80, Grazing Fees; and 90, Rangeland Management Decision Making; and FSH 2209.16, Allotment Management Handbook, Chapter 10, Allotment Management and Administration.

2. FSM 3800, Landscape Scale Restoration Program.

3. FSH 2409.12, Timber Cruising Handbook, Chapters 30, Cruising Systems; 40, Cruise Planning, Data Recording, and Cruise Reporting; 60, Quality Control; and 70, Designating Timber for Cutting.

4. FSH 2409.15, Timber Sale Administration Handbook, Chapters 20, Measuring and Accounting for Included Timber; 40, Rates and Payments; and 60, Operations and Other Provisions.

Final Directives That Have Been Issued Since July 1, 2022

No proposed or interim directives that were previously published for public comment have been issued since July 1, 2022.

JoLynn D. Anderson,

Branch Chief, Directives & Regulations, National Forest System.

[FR Doc. 2022–23858 Filed 11–2–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, Objective Yield Surveys. Minor changes to burden will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by January 3, 2023 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0088, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence

Avenue SW, Washington, DC 20250–2024.

• *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336, South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Kevin Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS Clearance Officer, at (202) 720–2206 or at *ombofficer@nass.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Objective Yield Surveys.

OMB Control Number: 0535–0088.

Expiration Date of Approval: March 31, 2023.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. The Objective Yield Surveys objectively predict yields for corn, cotton, potatoes, soybeans, wheat, citrus, almonds, walnuts, and hazelnuts. Sample fields are randomly selected for these crops, plots are laid out, and periodic counts and measurements are taken and then used to forecast production during the growing season. Production forecasts are published in USDA crop reports.

The fruit and nut objective yield surveys are conducted under cooperative agreements with several State Departments of Agriculture. The individual States will be reimbursing NASS for the costs associated with these additional surveys. The surveys will include: California citrus, almonds and walnuts; Florida citrus; and Oregon hazelnuts.

The increased burden hours and sample sizes reported below include these additional surveys.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, Title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average between 2 and 30 minutes per respondent.

Respondents: Farmers, ranchers, or farm managers.

Estimated Number of Respondents: 13,500.

Estimated Total Annual Burden on Respondents: 4,500 hours.

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

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, October 18, 2022.

Kevin Barnes,

Associate Administrator.

[FR Doc. 2022–23928 Filed 11–2–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jose Martin Gallegos-Luevanos, Inmate Number: 94641–479, FCI Pollock Federal Correctional Institution, P.O. Box 4050, Pollock, LA 71467; Order Denying Export Privileges

On January 6, 2020, in the U.S. District Court for the Southern District of Texas, Jose Martin Gallegos-Luevanos (''Gallegos-Luevanos'') was convicted of violating 18 U.S.C. 554(a). Specifically, Gallegos-Luevanos was convicted of fraudulently and knowingly attempting to export from the United States to Mexico, one Barret .50 caliber bolt rifle, three FA Cugir Romanian AK–47 rifles, seven Century Arms VSKA AK–47 rifles, one Century Arms WASR AK–47 rifle, and 85 assorted magazines, in violation of 18 U.S.C. 554. As a result of his conviction, the Court sentenced Gallegos-Luevanos to 48 months in prison, three years supervised release, and a $100 court assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Gallegos-Luevanos's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Gallegos-Luevanos to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Gallegos-Luevanos.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Gallegos-Luevanos's export privileges under the Regulations for a period of 10 years from the date of Gallegos-Luevanos's conviction. The Office of Exporter

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730 through 774 (2022).

Services has also decided to revoke any BIS-issued licenses in which Gallegos-Luevanos had an interest at the time of her conviction.[3]

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until January 6, 2030, Jose Martin Gallegos-Luevanos, with a last known address of Inmate Number: 94641–479, FCI Pollock, Federal Correctional Institution, P.O. Box 4050, Pollock, LA 71467, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Gallegos-Luevanos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Gallegos-Luevanos may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Gallegos-Luevanos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 6, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–23894 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on November 17, 2022, 10:00 a.m., Eastern Standard Time, at Gryphon Scientific, LLC, 6930 Carroll Avenue, 9th Floor, Takoma Park, Maryland 20912. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than November 10, 2022.

To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 15, 2022, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Ms. Springer via email.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2022–23932 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–836]

Sodium Nitrite From the Russian Federation: Antidumping Duty Order

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

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing an antidumping duty order on sodium nitrite from the Russian Federation.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 2022, Commerce published in the **Federal Register** its affirmative final determination in the less-than-fair-value (LTFV) investigation of sodium nitrite from the Russian Federation (Russia).[1] Pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), on October 27, 2022, the ITC notified Commerce of its affirmative final determination that an industry in the United States is materially injured, within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of imports of sodium nitrite from Russia that are sold in the United States at LTFV.[2]

Scope of the Order

The product covered by this order is sodium nitrite from Russia. For a complete description of the scope of this order, *see* the appendix to this notice.

Antidumping Duty Order

Based on the above-referenced affirmative final determinations, in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing this antidumping duty order. Moreover, because the ITC determined that U.S. imports of sodium nitrite from Russia are materially injuring a U.S. industry, unliquidated entries of such merchandise from Russia, entered or withdrawn from warehouse for consumption, as described below, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise, for all relevant entries of sodium nitrite from Russia. With the exception of entries occurring after expiration of the provisional measures period, but before publication of the ITC's final affirmative injury determination, as further described below, antidumping duties will be assessed on unliquidated U.S. entries of sodium nitrite from Russia entered, or withdrawn from warehouse, for consumption on or after June 28, 2022, the date of publication of the *Preliminary Determination* in this investigation in the **Federal Register**.[3]

Continuation of Suspension of Liquidation

Except as noted in the ''Provisional Measures'' section of this notice below, in accordance with section 736 of the Act, Commerce will instruct CBP to continue to suspend liquidation of all relevant entries of sodium nitrite from Russia. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins listed in the table below, adjusted by the export subsidy offset. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's affirmative final injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed in the table below, adjusted by the export subsidy offset. The all-others rate applies to all producers or exporters not specifically listed.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months.

Commerce published the *Preliminary Determination* in this investigation on June 28, 2022. Commerce did not extend the deadline for issuing its final determination in this investigation, which it published in the **Federal Register** on September 12, 2022. Therefore, the four-month period beginning on the date of publication of the *Preliminary Determination* ended on October 25, 2022.

Consequently, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation, and to liquidate, without regard to antidumping duties, unliquidated U.S. entries of sodium nitrite from Russia entered, or withdrawn from warehouse, for consumption after October 25, 2022, the final day on which the provisional measures were in effect, through the day preceding the date of publication of the ITC's affirmative final injury determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's affirmative final injury determination in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent) [4]
Uralchem, JSC	207.17	25.73
All Others	207.17	25.73

[1] *See Sodium Nitrite from the Russian Federation: Final Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 55781 (September 12, 2022) (*Final Determination*).

[2] *See* ITC's Letter, Investigation No. 731–TA–1586 (Final), dated October 27, 2022.

[3] *See Sodium Nitrite from the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 38377 (June 28, 2022) (*Preliminary Determination*).

[4] In the final determination in the companion countervailing duty (CVD) investigation, Commerce applied the adverse facts available rate of 45.36 percent to each of the following export subsidy programs: (1) Preferential Lending by Sberbank to Restructure $3.99 Billion in Uralchem Debt; (2) State Financing for Industrial Export Projects; (3) Russian Export Center (REC) Lending; and (4) State Specialized Russian Export-Import Bank (Eximbank) Financing. We subtracted 181.44 percent, the sum of the export subsidy rates, from the estimated weighted-average dumping margin of 207.17 percent to derive the 25.73 percent cash deposit rate. *See Sodium Nitrite from the Russian Federation: Final Affirmative Countervailing Duty Determination,* 87 FR 38375 (June 28, 2022).

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published a notice titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[5] On September 27, 2021, Commerce published a notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[6] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[7]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [8]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance in the annual inquiry service list segment in ACCESS for the order within 30 days after the date of publication of the order in the **Federal Register**. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published in the **Federal Register**.

Commerce may update an annual inquiry service list at any time, as needed, based on interested parties' amendments to their entries of appearance to remove, or otherwise modify, their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [9] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in the **Federal Register** in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty order with respect to sodium nitrite from Russia, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

This antidumping duty order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: October 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The product covered by this order is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this order may or may not contain an anti-caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of this order, the narrative description is dispositive, not the tariff heading, CAS registry number, or CAS name, which are provided for convenience and customs purposes.

[FR Doc. 2022–24021 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–825]

Certain Preserved Mushrooms From Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain preserved mushrooms (preserved mushrooms) from Spain are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney or Katherine Johnson, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington,

[5] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[6] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[7] *Id.*

[8] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[9] *See Final Rule,* 86 FR 52335.

DC 20230; telephone: (202) 482–2285 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 27, 2022.[1] On August 16, 2022, Commerce postponed the preliminary determination of this investigation until October 27, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from Spain. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] we set aside a period of time, as stated in the *Initiation Notice,* for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not modifying the scope language as it appeared in the *Initiation Notice. See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export price in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, Commerce has relied on facts available with an adverse inference in determining a weighted-average dumping margin for Riberebro Integral S.A.U. (Riberebro), under sections 776(a) and (b) of the Act, because Riberebro failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information in this investigation. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Eurochamp S.A.T. (Eurochamp), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Eurochamp is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist during the period January 1, 2021, through December 31, 2021:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Eurochamp S.A.T	10.28
Riberebro Integral S.A.U	40.07
All Others	10.28

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Because Riberebro did not provide information requested by Commerce, and Commerce preliminarily determines this respondent to have been uncooperative, we will not conduct verification of Riberebro.

[1] *See Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 24941 (April 27, 2022) (*Initiation Notice*).

[2] *See Certain Preserved Mushrooms from the Netherlands, Poland, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 50290 (August 16, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from Spain,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 87 FR at 24942.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 6, 2022, pursuant to 19 CFR 351.210(e), Eurochamp requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[8] On October 10, 2022, Giorgio Foods, Inc. (the petitioner) requested that, pursuant to 19 CFR 351.210(e), Commerce postpone the final determination in the event of a negative preliminary determination.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Application of Facts Available and Use of Adverse Inference
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2022–23923 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[7] *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* Eurochamp's Letter, ''Request to Extend the Final Determination,'' dated October 6, 2022.

[9] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated October 10, 2022.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–889]

Dioctyl Terephthalate From the Republic of Korea: Final Results of the Expedited First Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on dioctyl terephthalate (DOTP) from the Republic of Korea (Korea) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2021, Commerce published the *Initiation Notice* of the first sunset review of the AD order on DOTP from Korea [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On July 15, 2022, Eastman Chemical Company (Eastman Chemical), a domestic interested party and the petitioner in the underlying investigation, timely notified Commerce of its intent to participate within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] On August 1, 2022, Eastman Chemical submitted a timely substantive response for this review within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] Commerce did not receive a substantive response from any other interested parties with respect to the *Order* covered by this sunset review. On August 23, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from the respondent interested parties in this sunset review.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The merchandise covered by this *Order* is dioctyl terephthalate (DOTP), regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this *Order.*

DOTP that is otherwise subject to this *Order* is not excluded when commingled with DOTP from sources not subject to this *Order.* Commingled refers to the mixing of subject and non-subject DOTP. Only the subject component of such commingled products is covered by the scope of the *Order.*

DOTP has the general chemical formulation C6H4(C8H17COO)2 and a chemical name of ''bis (2-ethylhexyl) terephthalate'' and has a Chemical Abstract Service (CAS) registry number of 6422–86–2. Regardless of the label, all DOTP is covered by this *Order.*

Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the CAS registry number and HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margin of dumping likely to prevail if this *Order* were revoked. A list of the issues discussed in the decision memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNotices/ListLayout.aspx.*

Final Results of Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the margin of dumping likely to prevail would be up to 4.08 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return or destruction of APO materials or conversion to a judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: October 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margin of Dumping Likely To Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–23930 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Dioctyl Terephthalate from the Republic of Korea: Antidumping Duty Order,* 82 FR 39409 (August 18, 2017) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 39459 (July 1, 2022) (*Initiation Notice*).

[3] *See* Eastman Chemical's Letter, ''Five-Year (''Sunset'') Review Of Antidumping Duty Order On Dioctyl Terephthalate From the Republic of Korea: Eastman Chemical Company's Notice Of Intent To Participate In Sunset Review,'' dated July 15, 2022.

[4] *See* Eastman Chemical's Letter, ''Five-Year (Sunset) Review of Antidumping Duty Order on Dioctyl Terephthalate from the Republic of Korea: Eastman Chemical Company's Substantive Response to Notice of Initiation of Review of the Antidumping Duty Order,'' dated August 1, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews for July 1, 2022,'' dated August 23, 2022.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–815]

Certain Preserved Mushrooms From the Netherlands: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain preserved mushrooms (preserved mushrooms) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Smith or Patrick Barton, AD/CVD Operations, Office III, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2181 or (202) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 27, 2022.[1] On August 16, 2022, Commerce postponed the preliminary determination of this investigation until October 27, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is preserved mushrooms from the Netherlands. For a complete description of the scope of this investigation, *see Appendix I.*

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of this investigation as it appeared in the *Initiation Notice.* Therefore, Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* the full description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. Furthermore, pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available, with adverse inferences for Okechamp B.V. (Okechamp). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis,* or determined based entirely on facts otherwise available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters. Commerce has preliminarily assigned a rate based entirely on facts available, pursuant to section 776 of the Act, to Okechamp, and calculated a zero percent weighted-average dumping margin for Prochamp B.V. (Prochamp). Therefore, there are no rates calculated in this investigation not zero, *de minimis,* or based entirely on facts otherwise available upon which to calculate the preliminary rate for all exporters and producers not individually examined. Pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the alleged dumping margin(s) from the petition.[6]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Okechamp B.V	[7] 146.59
Prochamp B.V	[8] 0.00
All Others	[9] 132.97

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not

[1] *See Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 24941 (April 27, 2022) (*Initiation Notice*).

[2] *See Certain Preserved Mushrooms from the Netherlands, Poland, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair Value Investigations,* 87 FR 50291 (August 16, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from the Netherlands,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 87 FR at 24942.

[6] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 21909, 21912 (April 23, 2008), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany,* 73 FR 38986, 38987 (July 8, 2008), and accompanying Issues and Decision Memorandum at Comment 2; *see also Notice of Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from Taiwan,* 73 FR 39673, 39674 (July 10, 2008); *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances,* 78 FR 79670, 79671 (December 31, 2013), unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances,* 79 FR 14476, 14477 (March 14, 2014).

[7] *See* Preliminary Decision Memorandum at section V, ''Use of Facts Available with Adverse Inferences.'' *See also Initiation Notice,* 87 FR at 24944.

[8] *See* Memorandum, ''Preliminary Determination Analysis Memorandum for Prochamp B.V.,'' dated concurrently with this memorandum.

[9] *See* ''All Others Rate'' section, *supra; see also Initiation Notice,* 87 FR at 24944 and accompanying Antidumping Duty Investigation Initiation Checklist, ''Certain Preserved Mushrooms from the Netherlands,'' dated April 20, 2022. The margins alleged in the Petition were 120.88, 131.45, and 146.59 percent.

a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise except as explained below; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

Because the estimated weighted-average dumping margin is zero for Prochamp, entries of shipments of subject merchandise from Prochamp will not be subject to suspension of liquidation or cash deposit requirements. In such situations, Commerce applies the exclusion to the provisional measures to the producer/exporter combination that was examined in the investigation. Accordingly, Commerce is directing CBP not to suspend liquidation of entries of subject merchandise produced and exported by Prochamp. Entries of shipments of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, are subject to the provisional measures at the all-others rate.

Should the final estimated weighted-average dumping margin be zero or *de minimis* for the producer/exporter combination identified above, entries of shipments of subject merchandise from this producer/exporter combination will be excluded from the potential antidumping duty order. Such exclusions are not applicable to merchandise exported to the United States by this respondent in any other producer/exporter combinations or by third parties that sourced subject merchandise from the excluded producer/exporter combination.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose to interested parties any calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs and other written materials may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[10] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 6, 2022, pursuant to 19 CFR 351.210(e), Okechamp and Prochamp requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[12] On October 10, 2022, Giorgio Foods, Inc. (the petitioner) requested that, pursuant to 19 CFR 351.210(e), Commerce postpone the final determination in the event of a negative preliminary determination.[13] In accordance with sections 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, pursuant to section 735(a)(2) of the Act, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of preserved mushrooms from the Netherlands are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* Okechamp's and Prochamp's Letter, ''Request to Extend the Final Determination,'' dated October 6, 2022.

[13] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated October 10, 2022.

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this investigation are the genus *Agaricus.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Affiliation
V. Application of Facts Available and Use of Adverse Inference
VI. Discussion of the Methodology
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2022–23922 Filed 11–2–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–898]

Large Diameter Welded Pipe From the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2020

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers and/or exporters of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR), January 1, 2020, through December 31, 2020.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Jonathan Schueler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–9175, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2022, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register**,[1] and invited interested parties to comment. On July 12, 2022, the Government of Korea (GOK), Hyundai RB Co., Ltd. (Hyundai RB), and SeAH Steel Corporation (SeAH Steel) submitted timely case briefs.[2] On July 19, 2022, the American Line Pipe Producers Association Trade Committee (the Committee) submitted a timely rebuttal brief.[3] On September 20, 2022, Commerce extended the deadline for the final results of this review to no later than October 28, 2022.[4] Commerce held a public hearing on September 7, 2022.[5] For a complete description of the events that followed the *Preliminary Results, see* the Issues and Decision Memorandum.[6] We conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [7]

The merchandise covered by the *Order* is large diameter welded pipe. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our analysis of the case and rebuttal briefs and the evidence on the record, we made no changes from the *Preliminary Results.*

Companies Not Selected for Individual Review

We made no changes to the methodology for determining a rate for companies not selected for individual examination from the *Preliminary Results.* For the final results of this review, as indicated in the section below, we have continued to determine that only the mandatory respondent Hyundai RB received countervailable subsidies that are above *de minimis.* Therefore, consistent with section 705(c)(5)(A) of the Act, we are applying the net subsidy rate calculated for Hyundai RB to the non-selected companies.

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we calculated an individual net countervailable subsidy rate for Hyundai RB and SeAH Steel Corporation. Commerce determines that,

[1] *See Large Diameter Welded Pipe from the Republic of Korea: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2020,* 87 FR 33715 (June 3, 2022) (*Preliminary Results*).

[2] *See* GOK's Letter, ''GOK Case Brief,'' dated July 12, 2022; *see also* Hyundai RB's Letter, ''Hyundai RB Case Brief,'' dated July 12, 2022; and SeAH's Letter, ''Case Brief,'' dated July 12, 2022.

[3] *See* Committee's Letter, ''Rebuttal Brief,'' dated July 19, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Final Results,'' dated September 20, 2022.

[5] *See* Hearing Transcript, ''In the Matter of: the Administrative Review of the Antidumping Duty Order on Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from the Republic of Korea,'' dated September 14, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Large Diameter Welded Pipe from the Republic of Korea; 2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See Large Diameter Welded Pipe from the Republic of Korea: Countervailing Duty Order,* 84 FR 18773 (May 2, 2019) (*Order*).

during the POR, the net countervailable subsidy rates for the producers/exporters under review are as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Hyundai RB Co., Ltd	1.66
SeAH Steel Corporation [1]	*0.31
Review-Specific Average Rate Applicable to the Following Companies	
Chang Won Bending Co., Ltd	1.66
Dong Yang Steel Pipe Co., Ltd	1.66
EEW Korea Co., Ltd	1.66
HiSteel Co., Ltd	1.66

[1] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with SeAH Steel Corporation: SeAH Holdings Corporation and ESAB SeAH Corporation. The subsidy rates apply to all cross-owned companies.

* *De minimis.*

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Pursuant to 19 CFR 351.212(b)(2), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Instructions

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above based on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific rate or the all-others rate (9.29 percent), as appropriate.[8] These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 28, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Subsidies Valuation Information
V. Analysis of Programs
VI. Discussion of the Comments
Comment 1: Whether the Demand Response Resources (DRR) Program Is Countervailable
Comment 2: Whether Restriction of Special Taxation Act (RSTA) Article 7 Is *De Jure* Specific
Comment 3: Whether Certain Programs Are *De Facto* Specific
Comment 4: Whether the Energy Storage Systems (ESS) Program Is Specific
Comment 5: Whether to Allocate Benefits from the Process Quality Technology Development Project to the POR
Comment 6: Whether the Employment Security Improvement (ESI) Program Is Countervailable
VII. Recommendation

[8] *See Order,* 84 FR 18775.

[FR Doc. 2022–23920 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–825]

White Grape Juice Concentrate From Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that white grape juice concentrate (WGJC) from Argentina is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–0981, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 27, 2022.[1] On August 24, 2022, Commerce postponed the preliminary determination of this investigation until October 27, 2022. [2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is white grape juice concentrate from Argentina. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[6]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Constructed export prices have been calculated in accordance with section 772(b) of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding rates that are zero or *de minimis,* or that are determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins for Cepas Argentinas S.A. (Cepas) and Federacion de Cooperativas Vitivinicolas Argentinas Coop. Ltda. (Fecovita), the two mandatory respondents, that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[7]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent) [1]
Cepas Argentinas S.A.	12.21	8.50
Federacion de Cooperativas Vitivinicolas Argentinas Coop. Ltda [2]	27.17	23.77
All Others	19.43	15.88

[1] In the preliminary determination of the companion countervailing duty (CVD) proceeding, Commerce found that certain of the programs conferring a benefit to the two mandatory respondents, Cepas and Fecovita, were export contingent subsidies. In accordance with section 772(c)(1)(C) of the Act, we have preliminarily relied on the CVD rates of 3.71 and 3.40 percent (*i.e.,* the rates only related to export contingent subsidies) calculated for Cepas and Fecovita, respectively, as well as the CVD all others rate of 3.55 percent, for purposes of determining the preliminary antidumping duty cash deposit rate. *See White Grape Juice Concentrate from Argentina: Preliminary Affirmative Countervailing Duty Determination,* 87 FR 54455 (September 6, 2022), and accompanying calculation memoranda for Cepas, Fecovita, and all others.

[2] Fecovita is also known as ''Fecovita Coop. Ltd.'' *See* Memorandum, ''Less-Than-Fair-Value Investigation of White Grape Juice Concentrate from Argentina: Respondent Selection,'' dated June 7, 2022.

[1] *See White Grape Juice Concentrate from Argentina: Initiation of Less-Than-Fair-Value Investigation,* 87 FR 24934 (April 27, 2022) (*Initiation Notice*).

[2] *See White Grape Juice Concentrate from Argentina: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation,* 87 FR 51969 (August 24, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of White Grape Juice Concentrate from Argentina'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] Although Commerce received comments within this deadline from Delano Growers Grape Products, LLC (the petitioner), these comments did not relate to the scope language published in the *Initiation Notice. See* Petitioner's Letter, ''Petition for the Imposition of Antidumping and Countervailing Duties: White Grape Juice Concentrate from Argentina,'' dated May 24, 2022.

[7] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum, at Comment 1; *see also* Memorandum, ''Calculation of the All-Others Rate for the Preliminary Determination,'' dated October 27, 2022.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margins determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion CVD proceeding, when CVD provisional measures are in effect. Accordingly, where Commerce preliminarily made an affirmative determination for countervailable export subsidies, Commerce has offset the estimated weighted-average dumping margin by the appropriate CVD rate. Any such adjusted cash deposit rate may be found in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expire. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[8] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 14 and 17, 2022, pursuant to 19 CFR 351.210(e), Fecovita and Cepas requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[10] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c) and 19 CFR 351.210(g).

[8] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[9] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[10] *See* Fecovita's Letter, ''Antidumping Duty Investigation of White Grape Juice Concentrate from Argentina: Request to Extend Final Determination,'' dated October 14, 2022; *see also* Cepas's Letter, ''Antidumping Investigation of White Grape Juice Concentrate from Argentina: Request for Extension of Deadline for Final Determination, In Event of Affirmative Preliminary Determination,'' dated October 17, 2022.

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of this investigation covers white grape juice concentrate with a Brix level of 65 to 68, whether in frozen or non-frozen forms. White grape juice concentrate is concentrated grape juice produced from grapes of the Vitis vinifera L. species with a white flesh, including fresh market table grapes and raisin grapes (*e.g.,* Thompson Seedless), as well as several varietals of wine grapes (*e.g.,* Chardonnay, Chenin Blanc, Sauvignon Blanc, Colombard, *etc.*). The scope of this investigation covers white grape juice concentrate regardless of whether it has been certified as kosher, organic, or organic kosher. The white grape juice concentrate subject to this investigation consists of 100 percent grape juice with no other types of juice intermixed and no additional sugars or additives included.

The scope does not cover white grape juice concentrate produced from grapes of the Vitis labrusca species (*e.g.,* Niagara).

The products covered by this investigation are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 2009.69.0040 and 2009.69.0060. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Scope Comments
VI. Postponement of Final Determination and Extension of Provisional Measures
VII. Affiliation
VIII. Discussion of the Methodology
IX. Currency Conversion
X. Adjustments to Cash Deposit Rates for Export Subsidies in Companion Countervailing Duty Investigation
XI. Recommendation

[FR Doc. 2022–23924 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–6A001]

Export Trade Certificate of Review

ACTION: Notice of application for an amended Export Trade Certificate of Review for Alaska Longline Cod Commission, Application No. 10–6A001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, has received an application for an amended Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and seeks public comments on whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to *etca@trade.gov.* An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 10–6A001.''

Summary of the Application

Applicant: Alaska Longline Cod Commission, c/o Mundt MacGregor L.L.P., 271 Wyatt Way NE, Suite 106, Bainbridge Island, WA, 98110.

Contact: Duncan McIntosh, Attorney at Law.

Application No.: 10–6A001.

Date Deemed Submitted: October 21, 2022.

Proposed Amendment: Alaska Longline Cod Commission (''ALCC'') seeks to amend its Certificate as follows:

1. Under Export Trade, change references of Export Product to Export Products.

2. Add the following six products as Export Products within the meaning of section 325.2(j) of the Regulations (15 CFR 325.2(j)):

a. cod heads
b. cod collars
c. cod roe
d. cod chu
e. cod milt
f. ray wings

3. Change the reference to Export Product in the following sentence:

Change ''Frozen-at-sea means that the Export Product is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.'' to ''Frozen-at-sea means that the Alaska cod is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.''

The proposed amendment would result in the following Export Products under Export Trade in the Certificate:

Export Products

ALCC plans to export frozen at-sea, headed and gutted, Alaska cod (Gadus macrocephalus), also known as Pacific cod. Headed and gutted means the head and viscera are removed prior to freezing. Frozen-at-sea means that the Alaska cod is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.

ALCC also plans to export byproducts of ALCC frozen-at-sea, headed and gutted Alaska cod: cod heads; cod collars; cod roe; cod chu; cod milt; and ray wings. The cod heads, cod collars, cod roe, cod chu, and cod milt are derived from parts of the Alaska cod remaining after the heading-and-gutting of the cod to produce frozen-at-sea headed and gutted Alaska cod. The ray wings are derived from Alaska skate, which is caught incidentally while targeting Alaska cod.

Membership remains the same following this amendment:

1. Akulurak LLC, Seattle, WA;
2. Alaskan Leader Fisheries LLC, Lynden, WA;
3. Alaskan Leader Seafoods LLC, Lynden, WA;
4. Alaskan Leader Vessel LLC, Lynden, WA;
5. Aleutian Longline, LLC, Seattle, WA;
6. Aleutian Spray Fisheries, Inc., Seattle, WA;
7. Beauty Bay Washington, LLC, Bothell, WA;
8. Bering Leader Fisheries LLC, Lynden, WA;
9. Bristol Leader Fisheries LLC, Lynden, WA;
10. Bristol Wave Seafoods, LLC, Seattle, WA;
11. Coastal Alaska Premier Seafoods, LLC, Anchorage, AK;
12. Coastal Villages Longline LLC, Anchorage, AK;
13. Deep Sea Fisheries, Inc., Everett, WA;
14. Gulf Mist, Inc., Everett, WA;
15. Gulf Prowler, LLC, Juneau, AK;
16. Kodiak Leader Fisheries LLC, Lynden, WA;
17. Northern Leader Fisheries LLC, Lynden, WA;
18. Romanzof Fishing Company, L.L.C., Seattle, WA;
19. Shelford's Boat, Ltd., Mill Creek, WA;
20. Siu Alaska Corporation, Anchorage, AK;
21. Starfish Reverse, LLC, Seattle, WA;
22. Tatoosh Seafoods, LLC, Kingston, WA.

Dated: October 28, 2022.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2022–23859 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–455–806]

Certain Preserved Mushrooms From Poland: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain preserved mushrooms (preserved mushrooms) from Poland are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is January 1, 2021, through December 31, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Eliza DeLong, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on April 27, 2022.[1] On August 16, 2022, Commerce postponed the preliminary determination of this investigation until October 27, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are preserved mushrooms from Poland. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the *Preamble* to Commerce's regulations,[4] we set aside a period of time, as stated in the *Initiation Notice,* for parties to raise issues regarding product coverage (*i.e.,* scope).[5] No interested party commented on the scope of the investigation as it appeared in the *Initiation Notice.* Commerce is not modifying the scope language as it appeared in the *Initiation Notice. See* the complete description of the scope in Appendix I to this notice.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce has calculated export prices in accordance with section 772(a) of the Act. Normal value is calculated in accordance with section 773 of the Act. In addition, Commerce has relied on facts available with an adverse inference in determining a weighted-average dumping margin for Bonduelle Polska-UL.Michala (Bonduelle Michala) and Bonduelle Polska SA (Bonduelle Polska), under sections 776(a) and (b) of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

Commerce calculated an individual estimated weighted-average dumping margin for Okechamp S.A. (Okechamp), the only individually examined exporter/producer in this investigation. Because the only individually calculated dumping margin is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average dumping margin calculated for Okechamp is the margin assigned to all other producers and exporters, pursuant to section 735(c)(5)(A) of the Act.

[1] *See Certain Preserved Mushrooms from France, the Netherlands, Poland, and Spain: Initiation of Less-Than-Fair-Value Investigations,* 87 FR 24941 (April 27, 2022) (*Initiation Notice*).

[2] *See Certain Preserved Mushrooms from the Netherlands, Poland, and Spain: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 50290 (August 16, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Preserved Mushrooms from Poland,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[5] *See Initiation Notice,* 87 FR at 24942.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

Producer/exporter	Estimated weighted-average dumping margin (percent)
Okechamp S.A	23.43
Bonduelle Polska-UL.Michala	30.01
Bonduelle Polska SA	30.01
All Others	23.43

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) the cash deposit rate for the respondents listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Because Bonduelle Michala and Bonduelle Polska did not provide information requested by Commerce, and Commerce preliminarily determines both respondents to have been uncooperative, we will not conduct verification of Bonduelle Michala and Bonduelle Polska.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[7]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On October 6, 2022, pursuant to 19 CFR 351.210(e), Okechamp requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.[8] On October 10, 2022, Giorgio Foods, Inc. (the petitioner) requested that, pursuant to 19 CFR 351.210(e), Commerce postpone the final determination in the event of a negative preliminary determination.[9] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

U.S. International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

[6] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[7] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[8] *See* Okechamp's Letter, ''Request to Extend the Final Determination,'' dated October 6, 2022.

[9] *See* Petitioner's Letter, ''Petitioner's Request for Postponement of Final Determination,'' dated October 10, 2022.

Dated: October 27, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these investigations are the genus *Agaricus.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to this investigation is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Application of Facts Available and Use of Adverse Inference
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2022–23921 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with September anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with September anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for respondent selection. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than September 30, 2023.

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
AD Proceedings	
INDIA: Certain Lined Paper Products, A–533–843	9/1/21–8/31/22
Cellpage Ventures Private Limited.	
Dinakar Process Private Limited.	
ITC Limited-Education and Stationary Products Business.	
JC Stationery (P) Ltd.	
Lotus Global Private Limited.	
M/s.Bhaskar Paper Products.	
Navneet Education Ltd.	
Pioneer Stationery Private Limited.	
PP Bafna Ventures Private Limited.	
SGM Paper Products.	
INDIA: Oil Country Tubular Goods, A–533–857	9/1/21–8/31/22
Apollo Metalex (P) Limited.	
Crescent Foundry Co. Pvt. Ltd.	
Disha Auto Components Pvt. Ltd.	
Dynamic Flow Products Pvt. Ltd.	
Global Seamless Tubes and Pipes Pvt. Ltd.	
Goodluck Industries.	
Gstp (Hfs) Pvt. Ltd.	
GVN Fuels Limited; Maharashtra Seamless Limited; Jindal Pipes Limited.	
Heavy Metal Tubes India Pvt. Ltd.	
Hyundai Steel Pipe India Pvt. Ltd.	
Ismt Limited.	
Jindal SAW Limited.	
Krystal Global Engineering Limited.	
Lal Baba Seamless Tubes Pvt. Ltd.	
Metamorphosis Engitech India Pvt. Ltd.	
Midland Alloys Inc.	
Neelcon Steel Industries.	
Om Tubes and Fittings Industries.	
Pennar Industries Limited.	
Rajkrupa Metal Industries.	
Ratnamani Metals & Tubes Ltd.	
Renine Metalloys.	
Sainest Tubes Pvt. Ltd.	
Sandvik Materials Technology India.	
Sivanandha Pipe Fittings Limited.	
Surya Roshni Ltd.	
Timken Engineering and Research.	
Tubekraft Precision Private Limited.	
United Seamless Tubulaar Pvt. Ltd.	
Zenith Steel Pipes and Industries Ltd.	
MEXICO: Emulsion Styrene-Butadiene Rubber, A–201–848	9/1/21–8/31/22
Continental Tire de Mexico S.A. de C.V.	
Dynasol Elastomeros, S.A. de C.V.	
Dynasol LLC.	
Hyundai Glovis Mexico, S. de R.L. de C.V.	
Industrias Negromex, S.A. de C.V.	
Pirelli Neumaticos, S.A. de C.V.	
MEXICO: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes, A–201–847	9/1/21–8/31/22
Aceros del Toro S.A. de C.V.	
Aceros El Fraile S.A. de C.V.	
Border Assembly S. de R.L. de C.V.	
Buffalo Tube S.A. de C.V.	
Fortacero S.A. de C.V.	
Grupo Collado S.A. de C.V.	
Maquilacero S.A. de C.V.	
Perfiles y Herrajes L.M. S.A. de C.V.	
P.J. Trailers Company S.A. de C.V.	
Placa y Fierro de Monterrey S.A. de C.V.	
Productos Laminados de Monterrey S.A. de C.V.	
Regiomontana de Perfiles y Tubos S.A. de C.V.	
REPUBLIC OF KOREA: Certain Cold-Rolled Steel Flat Products, A–580–881	9/1/21–8/31/22
Hyundai Steel Company.	
KG Dongbu Steel Co., Ltd.	
POSCO.	
POSCO International Corporation.	
REPUBLIC OF KOREA: Heavy Walled Rectangular Welded Carbon Pipes and Tubes, A–580–880	9/1/21–8/31/22
Dong-A-Steel Co., Ltd.	
HiSteel Co., Ltd.	
NEXTEEL Co., Ltd.	
SeAH Steel Corporation.	

	Period to be reviewed
REPUBLIC OF KOREA: Oil Country Tubular Goods, A–580–870	9/1/21–8/31/22
AJU Besteel Co., Ltd.	
Dong-A Steel Co., Ltd.	
HiSteel Co., Ltd.	
Husteel Co., Ltd.	
Hyundai Steel Company.	
ILJIN Steel Corporation.	
K Steel Corporation.	
Keonwoo Metals Co., Ltd.	
Kukje Steel.	
MSTEEL Co., Ltd.	
NEXTEEL Co., Ltd.	
Nissei Trading Co., Ltd.	
POSCO International Corporation.	
SeAH Steel Corporation.	
Sungwon Steel Co., Ltd.	
TGS Pipe.	
SPAIN: Methionine, A–469–822	3/14/21–8/31/22
Adisseo Espana S.A.	
TAIWAN: Forged Steel Fittings, A–583–863	9/1/21–8/31/22
Both-Well Steel Fittings, Co., Ltd.	
TAIWAN: Passenger Vehicle and Light Truck Tires,[5] A–583–869	1/6/21–6/30/22
Cheng Shin Rubber Ind. Co., Ltd.	
SULTANATE OF OMAN: Polyethylene Terephthalate (PET) Sheet, A–523–813	9/1/21–8/31/22
OCTAL SAOC—FZC.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Magnesia Carbon Bricks, A–570–954	9/1/21–8/31/22
Autong Industry Co., Ltd.	
Dandong Xinxing Carbon Co., Ltd.	
Fedmet Resources Corporation.	
Fengchi Imp. and Exp. Co., Ltd.	
Fengchi Imp. and Exp. Co., Ltd. of Haicheng City.	
Fengchi Mining Co., Ltd. of Haicheng City.	
Fengchi Refractories Co., of Haicheng City.	
FRC Global Inc.	
Haicheng Donghe Taidi Refractory Co., Ltd.	
Henan Xintuo Refractory Co., Ltd.	
Liaoning Fucheng Refractories.	
Liaoning Zhongmei High Temperature Material Co., Ltd.	
Liaoning Zhongmei Holding Co., Ltd.	
PRCO America Inc.	
Puyang Refractories Co., Ltd.	
Puyang Refractories Group Co., Ltd.	
Qingdao Wonjin Special Refractory Material Co., Ltd.	
RHI Refractories Liaoning Co., Ltd.	
Shandong Minye Refractory Fibre Co., Ltd.	
Shanxi Xinrong International Trade Co., Ltd.	
Shenglong Refractories Co., Ltd.	
SL Refractories LLC.	
Tangshan Strong Refractories Co., Ltd.	
The Economic Trading Group Of Haicheng Houying Corp. Ltd.	
Tianjin New Century Refractories Co., Ltd.	
Wonjin Refractory Co., Ltd.	
Xinyi New Century Refractories Co., Ltd.	
Yingkou Guangyang Refractories Co., Ltd.	
Yingkou Heping Samwha Minerals, Co., Ltd.	
Yingkou Heping Sanhua Materials Co., Ltd.	
Yingkou Hongyu Wonjin Refractory Material Co., Ltd.	
Yingkou Jiamei Refractories Co., Ltd.	
Yingkou Mei'ao Mining Product Co., Ltd.	
Zhengzhou Rongsheng Refractory Co., Ltd.	
Zibo Fubang Wonjin Refractory Technology Co., Ltd.	
Zibo Hengsen Refractory Co., Ltd.	
Zibo Hitech Material Co., Ltd.	
Zibo Jiuqiang Refractory Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks, A–570–088	9/1/21–8/31/22
Guangdong Wireking Housewares and Hardware Co., Ltd.	
Hebei Minmetals Co., Ltd.	
Jiangsu JISE Intelligent Storage Equipment Co., Ltd.	
Jiangsu Nova Intelligent Logistics Equipment Co., Ltd.	
Jiangsu Starshine Industry Equipment Co., Ltd.	
Nanjing Dongsheng Shelf Manufacturing Co., Ltd.	
Nanjing Ironstone Storage Equipment Co., Ltd.	
Nanjing Kingmore Logistics Equipment Manufacturing Co., Ltd.	

	Period to be reviewed
Suntop (Xiamen) Display System Inc.	
Suzhou (China) Sunshine Hardware & Equipment Imp. & Exp. Co. Ltd.	
Xiamen Luckyroc Industry Co., Ltd.	
TURKEY: Steel Concrete Reinforcing Bar, A–489–829	7/1/21–6/30/22
Kaptan Demir Celik Endustri ve Ticaret A.S.[6].	
CVD Proceedings Period to be Reviewed	
REPUBLIC OF KOREA: Certain Cold-Rolled Steel Flat Products, C–580–882	1/1/21–12/31/21
AJU Steel Co., Ltd.	
Amerisource Korea.	
Amerisource International.	
BC Trade.	
Busung Steel Co., Ltd.	
Cenit Co., Ltd.	
Daewoo Logistics Corp.	
Dai Yang Metal Co., Ltd.	
DK GNS Co., Ltd.	
Dongbu Incheon Steel Co., Ltd.	
Dongbu Steel Co., Ltd.	
Dongbu USA.	
KG Dongbu Steel Co., Ltd.	
Dong Jin Machinery.	
Dongkuk Industries Co., Ltd.	
Dongkuk Steel Mill Co., Ltd.	
Eunsan Shipping and Air Cargo Co., Ltd.	
Euro Line Global Co., Ltd.	
Golden State Corp.	
GS Global Corp.	
Hanawell Co., Ltd.	
Hankum Co., Ltd.	
Hyosung TNC Corp.	
Hyuk San Profile Co., Ltd.	
Hyundai Group.	
Hyundai Steel Co., Ltd.	
Hyundai Steel Company.	
Iljin NTS Co., Ltd.	
Iljin Steel Corp.	
Jeen Pung Industrial Co., Ltd.	
JS Steel Co. Ltd.	
JT Solution.	
Kolon Global Corporation.	
Nauri Logistics Co., Ltd.	
Okaya (Korea) Co., Ltd.	
PL Special Steel Co., Ltd.	
POSCO.	
POSCO C&C Co., Ltd.	
POSCO Daewoo Corp.	
POSCO International Corp.	
Samsung C&T Corp.	
Samsung STS Co., Ltd.	
SeAH Steel Corp.	
SM Automotive Ltd.	
SK Networks Co., Ltd.	
Taihan Electric Wire Co., Ltd.	
TGS Pipe Co., Ltd.	
TI Automotive Ltd.	
Topco Global Co., Ltd.	
Xeno Energy.	
Young Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Racks, C–570–089	1/1/21–12/31/21
Nanjing Dongsheng Shelf Manufacturing Co., Ltd.	
Nanjing Ironstone Storage Equipment Co., Ltd.	
Ningbo Xinguang Rack Co., Ltd.	
Xiamen Luckyroc Industry Co., Ltd.	
Suspension Agreements	
MEXICO: Fresh Tomatoes, A–201–820	9/1/21–8/31/22

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[7] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[8]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[9] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[10] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 31, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–23954 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–DS–P

[5] The company listed below was inadvertently referenced as ''Cheng Shin Rubber Ind. Col Ltd.'' in the initiation notice that published on September 6, 2022 (87 FR 54463).

[6] In the initiation notice that published on September 6, 2022 (87 FR 54463), we noted that this company is part of a collapsed entity with Kaptan Metal Dis Ticaret Ve Nakliayt A.S. and that we were initiating a review of the collapsed entity. The correct spelling of this company's name is Kaptan Metal Dis Ticaret ve Nakliyat A.S.

[7] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[8] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 41363 (July 10, 2020).

[9] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[10] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XC511]

Endangered and Threatened Species; Take of Abalone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of two scientific research and enhancement permits.

SUMMARY: Notice is hereby given that NMFS has issued two scientific research and enhancement permits (Permit 26342 and Permit 26606) to the University of California, Santa Cruz, under the Endangered Species Act (ESA). The research and enhancement activities are intended to increase knowledge of black abalone listed under the Endangered Species Act (ESA) and to help guide management, conservation, and recovery efforts.

ADDRESSES: The permits and related documents are available for review upon written request via email to *nmfs.wcr-apps@noaa.gov.* Please include the permit number (26342 or 26606) in the subject line of the email.

FOR FURTHER INFORMATION CONTACT: Susan Wang, Long Beach, California, Phone: 562–980–4199, email: *Susan.Wang@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice was published in the **Federal Register** on May 18, 2022, that two new permit requests had been submitted by the University of California, Santa Cruz. To locate the **Federal Register** notice that announced our receipt of the applications and a complete description of the research, go to *www.federalregister.gov* and search on the permit numbers and **Federal Register** notice information provided in the table below.

TABLE 1—ISSUED PERMITS

Permit No.	RTID	Applicant	Previous **Federal Register** notice	Issuance date
26342	0648–XC035	University of California, Santa Cruz—100 Shaffer Road, Santa Cruz, CA 95060 (Responsible Party: Peter Raimondi).	87 FR 30207; May 18, 2022	October 6, 2022.
26606	0648–XC035	University of California, Santa Cruz—100 Shaffer Road, Santa Cruz, CA 95060 (Responsible Party: Peter Raimondi).	87 FR 30207; May 18, 2022	October 6, 2022.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS prepared an environmental assessment (EA) for Permit 26342 and concluded that there will be no significant impact on the human environment as a result of the activities proposed under this permit. A copy of the EA is available on the NMFS website (*www.fisheries.noaa.gov*). In addition, NMFS determined that the activities proposed under Permit 26606 are categorically excluded from the requirement to prepare an EA or environmental impact statement.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on finding that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Dated: October 31, 2022.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–23970 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC509]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils will hold a public meeting of their joint Northeast Trawl Advisory Panel.

DATES: The meeting will be held on Monday, November 21, 2022, from 1 p.m. to 3:30 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar at *www.mafmc.org* prior to the meeting.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Councils' Northeast Trawl Advisory Panel (NTAP) will meet via webinar to review and discuss the NTAP Operations Manual and Orientation Document.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–23964 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC514]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council

for formal consideration and action, if appropriate.

DATES: This webinar will be held on Tuesday, November 22, 2022, at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/3586121371946018064.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will discuss recommendations from the Groundfish Advisory Panel, Recreational Advisory Panel, and Groundfish Plan Development Team. They will also discuss draft alternatives and draft impacts analysis, and make recommendations to the Council to include: status determination criteria, rebuilding plan for Gulf of Maine (GOM) cod, FY2023–FY2024 US/CA total allowable catches, FY2023–FY2024 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–FY2025 specifications for 14 stocks, additional measures to promote stock rebuilding for GB cod and GOM cod, and revised acceptable biological catch (ABC) control rules, in consultation with the Scientific and Statistical Committee in Framework Adjustment 65/ Specifications & Management Measures. The Committee will discuss the development of a draft white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion regarding Atlantic Cod Management.

They will make possible 2023 Council Priorities recommendations to the Council, as appropriate, and discuss other business as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 31, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–23966 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2022–0025]

Request for Comments on USPTO Initiatives To Ensure the Robustness and Reliability of Patent Rights

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Request for comments; extension of comment period.

SUMMARY: The United States Patent and Trademark Office (USPTO) is extending the comment period for the notice titled ''Request for Comments on USPTO Initiatives to Ensure the Robustness and Reliability of Patent Rights'' that was published in the **Federal Register** on October 4, 2022. The notice's comment period is extended until February 1, 2023. This will be the only extension of the comment period.

DATES: The USPTO is extending the comment period for the request for comments until February 1, 2023.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2022–0025 on the homepage and click ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this document and click on the ''Comment'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted as various file types, including Adobe® portable document format (PDF) and Microsoft Word® format. Because comments will be made available for public inspection, information the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below (at **FOR FURTHER INFORMATION CONTACT**) for special instructions.

FOR FURTHER INFORMATION CONTACT: Linda Horner, Administrative Patent Judge, at 571–272–9797; June Cohan, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–7744; or Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at 571–272–7728.

SUPPLEMENTARY INFORMATION: On October 4, 2022, the USPTO published a notice titled ''Request for Comments on USPTO Initiatives to Ensure the Robustness and Reliability of Patent Rights'' to seek initial public comments on proposed initiatives directed at bolstering the robustness and reliability of patents to incentivize and protect new and nonobvious inventions while facilitating the broader dissemination of public knowledge, which will, in turn, promote innovation and competition. *See* 87 FR 60130. The USPTO is extending the written comment period until February 1, 2023, to ensure that all stakeholders have a sufficient opportunity to submit comments on the questions presented in the October 4, 2022, notice. The USPTO is extending this written comment period only once.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–23879 Filed 11–2–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3511–024]

Lower Saranac Hydro, LLC; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory

Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license for the Groveville Hydroelectric Project, located on Fishkill Creek in the City of Beacon, Dutchess County, New York, and has prepared an Environmental Assessment (EA) for the project. The project does not occupy federal land.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filings. Please file comments using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3511–024.

For further information, contact Chris Millard at (202) 502–8256 or by email at *christopher.millard@ferc.gov.*

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23947 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–222–000]

EnerSmart Mesa Heights BESS LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EnerSmart Mesa Heights BESS LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 17, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23934 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–223–000]

EnerSmart Imperial Beach BESS LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EnerSmart Imperial Beach BESS LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 17, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23940 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–501–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Southeast Energy Connector Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Southeast Energy Connector Project (Project) involving construction and operation of natural gas facilities by Transcontinental Gas Pipe Line Company, LLC (Transco). Transco plans to modify an existing compressor station and construct 1.8 miles of pipeline in Coosa and Chilton Counties, Alabama to provide 150,000 dekatherms per day of natural gas transportation service to an existing electric power generator in Shelby County, Alabama. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the Schedule for Environmental Review section of this notice.

As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' By notice issued on May 19, 2022 in Docket No. PF22–6–000 the Commission opened a scoping period during Transco's planning process for the Project and prior to filing a formal application with the Commission, a process referred to as ''pre-filing.'' Transco has now filed an application with the Commission, and staff intends to prepare an EIS that will address the concerns raised during the pre-filing scoping process and comments received in response to this notice.

The Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 28, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the Public Participation section of this notice.

As mentioned above, during the pre-filing process, the Commission opened a scoping period which expired on June 20, 2022; however, Commission staff continued to accept comments during the entire pre-filing process. All substantive written comments provided during pre-filing will be addressed in the EIS. Therefore, if you submitted comments on this Project to the Commission during the pre-filing process in Docket No. PF22–6–000 you do not need to file those comments again.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Transco provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–501–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Transco plans to install a new compressor unit and modify compressor units at existing Compressor Station 105 located in Coosa County, Alabama and construct 1.83 mile 42-inch-diameter Chilton Loop pipeline in Coosa and Chilton Counties, Alabama. According to Transco, its Project would enable it to provide an incremental 150,000 dekatherms per day of year-round firm transportation capacity from existing supply points in Mississippi and Alabama to the existing Gaston delivery meter station located adjacent to the existing Compressor Station 105 in Coosa County, Alabama. The purpose of the proposed project is to provide natural gas to the Gaston Steam Plant for the conversion of existing 895-megawatt (MW) Unit 5 to natural gas. The Gaston Steam Plant is a 2,015–MW capacity power station in Shelby County, near Wilsonville, Alabama, currently powering its Unit 5 on coal.

The Project would consist of the following facilities:

- installation of a 11,110 horsepower Solar Taurus 70 gas-fired turbine in a new building with associated appurtenant facilities at Compressor Station 105 in Coosa County, Alabama;
- modification of compressor units 1–3 at Compressor Station 105;
- construction of 1.83 miles of new 42-inch-diameter 'E' mainline loop [1] pipeline from Mileposts (MP) 909.63 to 911.46 in Chilton and Coosa Counties, Alabama; and
- remove the existing pigging [2] traps at MPs 909.63 and 911.43 on the existing 'E' mainline and tie-in the planned 42-inch-diameter Chilton Loop.

The general location of the Project facilities is shown in appendix 1.[3]

Based on the environmental information provided by Transco, the Project would disturb about 129 acres of land, which includes temporary construction workspace, permanent easement, and temporary access roads. Following construction, Transco would maintain 13 acres for operation of the Project's facilities and the remaining acreage would be restored and returned to pre-construction land use. Approximately 73 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

Based on an initial review of Transco's proposal, Commission staff have identified several expected impacts that deserve attention in the EIS. The Project would impact 50 acres of upland forest, five small waterbodies, and potentially the Coosa River.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- greenhouse gas and climate;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [4] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[5] Alternatives currently under consideration include:

- no-action alternative, meaning the Project is not implemented;
- the Chilton Loop Alternative 2 pipeline route deviation reducing the Project length by 0.06 miles;
- the Chilton Loop Alternative pipeline route deviation increasing sideslope construction by 0.20 acres; and
- Autauga Loop Major Route Alternative increasing Project length by 2.36 miles and eliminating steep terrain.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

[3] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[4] For instructions on connecting to eLibrary, refer to the last page of this notice.

[5] 40 CFR 1508.1(z)

comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[6] The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On August 30, 2022, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in March 2023.

Issuance of Notice of Availability of the final EIS—August 4, 2023.

90-day Federal Authorization Decision Deadline[7]—November 2, 2023.

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Permit or authorization	Agency
Clean Water Act (CWA) Section 404 Discharges to Waters of the United States/Section 10 River and Harbor Act.	U.S. Army Corps of Engineers.
CWA Section 402 Stormwater and Construction Dewatering Permits	Alabama Department of Environmental Management.
Section 106 Consultation	Alabama Historical Commission.
Endangered Species Act Section 7 Consultation	U.S. Fish and Wildlife Service.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; local community groups, schools, churches, and businesses; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–501–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments. OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–501). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23946 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

[6] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[7] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–82–000.
Applicants: MountainWest Pipeline, LLC.
Description: § 4(d) Rate Filing: 2022 Cleanup Filing to be effective 12/1/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5129.
Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: RP23–83–000.
Applicants: MountainWest Overthrust Pipeline, LLC.
Description: § 4(d) Rate Filing: Cleanup Filing 2022 to be effective 12/1/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5130.
Comment Date: 5 p.m. ET 11/8/22.

Docket Numbers: RP23–84–000.
Applicants: ETC Tiger Pipeline, LLC.
Description: § 4(d) Rate Filing: Fuel Filing on 10–28–22 to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5034.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–85–000.
Applicants: Fayetteville Express Pipeline LLC.
Description: Compliance filing: Fuel Filing on 10–28–22 to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5036.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–86–000.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance filing: Annual Interruptible Storage Revenue Credit filed 10–28–22 to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5037.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–87–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedule GSS LSS SS–2 Tracker Filing Effective 11/1/2022 to be effective 11/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5046.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–88–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: FLU and EPC Recalculation Update Filing to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5076.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–89–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Amendment (Hartree) to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5078.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–90–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel_LU Quarterly Update Filing Dec. 1, 2022 to be effective 12/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5091.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–91–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agmt Update (Conoco—Nov 22) to be effective 11/1/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5114.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–93–000.
Applicants: Midwestern Gas Transmission Company.
Description: Compliance filing: 2021—2022 Cash Out Report to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5126.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–94–000.
Applicants: Midwestern Gas Transmission Company.
Description: Compliance filing: 2021—2022 Gas Sales and Purchase Report to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5131.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–95–000.
Applicants: OkTex Pipeline Company, L.L.C.
Description: Compliance filing: 2021—2022 Gas Sales and Purchase Report to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5135.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–96–000.
Applicants: Viking Gas Transmission Company.
Description: Compliance filing: 2021–2022 Gas Sales and Purchases Report to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5137.
Comment Date: 5 p.m. ET 11/9/22.

Docket Numbers: RP23–97–000.
Applicants: Guardian Pipeline, L.L.C.
Description: Compliance filing: 2021–2022 Gas Sales and Purchases Report to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5144.
Comment Date: 5 p.m. ET 11/9/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23935 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4334–017]

EONY Generation Limited; Notice of Intent To Prepare an Environmental Assessment

On January 28, 2021, EONY Generation Limited (EONY) filed an application for a new major license for the 3.645-megawatt Philadelphia Hydroelectric Project (Philadelphia Project; FERC No. 4334). The Philadelphia Project is located on the Indian River, in the Village of Philadelphia in Jefferson County, New York. The project does not occupy federal land.

In accordance with the Commission's regulations, on July 21, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff

does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the Philadelphia Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA.	April 2023.[1]
Comments on EA	May 2023.

Any questions regarding this notice may be directed to Emily Carter at (202) 502–6512 or *emily.carter@ferc.gov.*

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23942 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2722–001.
Applicants: E. BarreCo Corp LLC.
Description: Refund Report: Revised Refund report to 2 to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5129.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER21–2722–002.
Applicants: E. BarreCo Corp LLC.
Description: Notice of Non-Material Change in Status of E. BarreCo Corp LLC.
Filed Date: 10/27/22.
Accession Number: 20221027–5182.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER22–1439–003; ER22–1440–003; ER22–1441–003.
Applicants: EdSan 1B Group 2, LLC, EdSan 1B Group 1 Sanborn, LLC, EdSan 1B Group 1 Edwards, LLC.
Description: Notice of Non-Material Change in Status of EdSan 1B Group 1 Edwards, LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5246.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER22–2799–000; ER22–2800–000; ER22–2801–000.
Applicants: VESI 25 LLC, VESI 24 LLC, VESI 21 LLC.
Description: Amendment to September 7, 2022 Applications for Market-Based Rate Authorization of VESI 21 LLC, et al.
Filed Date: 10/27/22.
Accession Number: 20221027–5186.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–222–000.
Applicants: EnerSmart Mesa Heights BESS LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 12/27/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5140.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–223–000.
Applicants: EnerSmart Imperial Beach BESS LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 12/27/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5141.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–224–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–10–27_SA 3317 Termination of NSPM-Nobles 2 Power Partners E&P (J512) to be effective 10/28/2022.
Filed Date: 10/27/22.
Accession Number: 20221027–5151.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–225–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: Q3 2022 Quarterly Filing of City and County of San Francisco's WDT SA (SA 275) to be effective 9/30/2022.
Filed Date: 10/27/22.
Accession Number: 20221028–5000.
Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: ER23–226–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Fourth Amended and Restated Western Joint Dispatch Agreements to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5016.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–227–000.
Applicants: Midcontinent Independent System Operator, Inc., Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–10–28_SA 3924 METC-Lansing Board of Water & Light IA to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5025.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–228–000.
Applicants: Otter Tail Power Company.
Description: Tariff Amendment: Notice of Cancellation of Operating Services Agreement No. 56 with ALPU to be effective 12/31/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5038.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–229–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 5868; Queue No. AC2–165 to be effective 12/7/2020.
Filed Date: 10/28/22.
Accession Number: 20221028–5042.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–230–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6674; Queue No. AC1–168 to be effective 9/30/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5050.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–231–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Attachment W to Update Index of Grandfathered Agreements to be effective 1/1/2023.
Filed Date: 10/28/22.
Accession Number: 20221028–5053.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–232–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: SCE 2023 RSBAA Update to be effective 1/1/2023.
Filed Date: 10/28/22.
Accession Number: 20221028–5084.
Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–233–000.

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Philadelphia Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

Applicants: Wisconsin Electric Power Company.

Description: § 205(d) Rate Filing: Filing of Revised Balancing Authority Operations Coordination Agreement to be effective 12/30/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5089.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–234–000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Revisions to Operating Services Agreement with CPEC, Service Agreement No. 54 to be effective 1/1/2023.

Filed Date: 10/28/22.

Accession Number: 20221028–5098.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–235–000.

Applicants: Old Gold Energy Center, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 12/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5104.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–236–000.

Applicants: Clearwater Energy Resources LLC.

Description: Baseline eTariff Filing: Clearwater Energy Resources LLC Co-Owners TSA and Request for Waivers to be effective 11/1/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5116.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–237–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2022–10–28 WAPA Const Fac Agmt 359–PSCo 0.1.0 to be effective 12/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5117.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–238–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Kruger Energy Crawford LGIA Termination Filing to be effective 10/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5120.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–239–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Kruger Energy North Sumter Solar LGIA Termination Filing to be effective 10/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5121.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–240–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: EDF Renewables (Double Run 2 Solar & Battery) LGIA Filing to be effective 10/20/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5122.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–241–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: EDF Renewables (Rock House Solar & Battery) LGIA Filing to be effective 10/20/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5123.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–242–000.

Applicants: Nevada Power Company.

Description: Compliance Filing for Order No. 676–J of Nevada Power Company.

Filed Date: 10/28/22.

Accession Number: 20221028–5147.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–243–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amended PJM–WEPCO Balancing Authority Operations Coordination Agreement to be effective 12/30/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5150.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–244–000.

Applicants: Flemington Solar, LLC.

Description: Compliance filing: Reactive power informational filing to be effective N/A.

Filed Date: 10/28/22.

Accession Number: 20221028–5157.

Comment Date: 5 p.m. ET 11/18/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23937 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–15–000.

Applicants: Georgia Power Company.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Georgia Power Company under.

Filed Date: 10/28/22.

Accession Number: 20221028–5308.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: EC23–16–000.

Applicants: Great River Hydro, LLC, HQI US Holding LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Great River Hydro, LLC, et al.

Filed Date: 10/28/22.

Accession Number: 20221028–5311.

Comment Date: 5 p.m. ET 11/18/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–16–000.

Applicants: CED Timberland Solar, LLC.

Description: CED Timberland Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/27/22.

Accession Number: 20221027–5166.

Comment Date: 5 p.m. ET 11/17/22.

Docket Numbers: EG23–17–000.

Applicants: Daggett Solar Power 3 LLC.

Description: Daggett Solar Power 3 LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/26/22.
Accession Number: 20221026–5239.
Comment Date: 5 p.m. ET 11/16/22.
Docket Numbers: EG23–18–000.
Applicants: Old Gold Energy Center, LLC.
Description: Old Gold Energy Center, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/28/22.
Accession Number: 20221028–5115.
Comment Date: 5 p.m. ET 11/18/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–027; ER12–2381–013; ER13–1069–016; ER14–1140–003.
Applicants: Inspire Energy Holdings, LLC, MP2 Energy LLC, MP2 Energy NE LLC, Shell Energy North America (US), L.P.
Description: Notice of Non-Material Change in Status of Inspire Energy Holdings, LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5292.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–1776–003; ER10–2822–021; ER10–2824–003; ER10–2825–004; ER10–2957–004; ER10–2995–004; ER10–2996–003; ER10–2998–003; ER10–2999–003; ER10–3000–003; ER10–3009–005; ER10–3013–004; ER10–3029–003; ER16–1250–013; ER19–2360–002; ER21–2272–001; ER21–2748–001; ER21–2847–001.
Applicants: Montague Solar, LLC, Lund Hill Solar, LLC, Golden Hills Wind Farm, LLC, Montague Wind Power Facility, LLC, Avangrid Renewables, LLC, Klondike Wind Power III LLC, Star Point Wind Project LLC, Pebble Springs Wind LLC, Klondike Wind Power II LLC, Klondike Wind Power LLC, Klamath Generation LLC, Klamath Energy LLC, Juniper Canyon Wind Power LLC, Hay Canyon Wind LLC, Big Horn II Wind Project LLC, Big Horn Wind Project LLC, Atlantic Renewable Projects II LLC, Leaning Juniper Wind Power II LLC.
Description: Notice of Change in Status of Avangrid Renewables, LLC, et al.
Filed Date: 10/27/22.
Accession Number: 20221027–5185.
Comment Date: 5 p.m. ET 11/17/22.
Docket Numbers: ER10–1882–007; ER12–1933–015; ER12–1934–013; ER22–1574–002; ER22–1575–001; ER22–1576–002; ER22–1578–002.
Applicants: WPL Wood County Solar, LLC, WPL North Rock Solar, LLC, WPL Crawfish River Solar, LLC, WPL Bear Creek Solar, LLC, Wisconsin Power and Light Company, Interstate Power and Light Company, Wisconsin River Power Company.
Description: Notice of Change in Status of Interstate Power and Light Company, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5305.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–2131–027; ER10–2137–027; ER10–2138–028; ER10–2139–028; ER10–2140–027; ER10–2141–027; ER14–2187–021; ER14–2799–018; ER21–258–004.
Applicants: Todd Solar LLC, Beech Ridge Energy Storage LLC, Grand Ridge Energy Storage LLC, Grand Ridge Energy V LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy III LLC, Grand Ridge Energy II LLC, Beech Ridge Energy LLC, Grand Ridge Energy LLC.
Description: Notice of Change in Status of Beech Ridge Energy LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5254.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–2133–025; ER11–3872–026; ER21–1838–003.
Applicants: Orangeville Energy Storage LLC, Stony Creek Energy LLC, Sheldon Energy LLC.
Description: Notice of Change in Status of Orangeville Energy Storage LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5233.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–2136–019.
Applicants: Invenergy Cannon Falls LLC.
Description: Notice of Change in Status of Invenergy Cannon Falls LLC.
Filed Date: 10/28/22.
Accession Number: 20221028–5229.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–2405–013; ER10–2738–012; ER11–4267–019; ER15–2631–009; ER16–2703–006; ER20–2379–004; ER22–2513–001.
Applicants: Deerfield Wind Energy 2, LLC, Sugar Creek Wind One LLC, Deerfield Wind Energy, LLC, Odell Wind Farm, LLC, Algonquin Energy Services Inc., The Empire District Electric Company, High Prairie Wind Farm II, LLC.
Description: Notice of Non-Material Change in Status of Deerfield Wind Energy, LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5284.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER10–3069–010; ER10–3070–010.
Applicants: Alcoa Power Marketing LLC, Alcoa Power Generating Inc.
Description: Notice of Change in Status of Alcoa Power Generating Inc., et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5296.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER11–2558–005.
Applicants: Niagara Mohawk Power Corporation.
Description: Notice of Change in Status of Niagara Mohawk Power Corporation.
Filed Date: 10/28/22.
Accession Number: 20221028–5273.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER11–4044–030; ER11–4046–029; ER21–2715–003; ER21–2716–003; ER22–2046–001.
Applicants: Sapphire Sky Wind Energy LLC, Fairbanks Solar Holdings LLC, Fairbanks Solar Energy Center LLC, Gratiot County Wind II LLC, Gratiot County Wind LLC.
Description: Notice of Change in Status of Fairbanks Solar Energy Center LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5240.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER15–103–011; ER18–140–009; ER22–2144–002.
Applicants: Invenergy Nelson Expansion LLC, Lackawanna Energy Center LLC, Invenergy Nelson LLC.
Description: Notice of Change in Status of Invenergy Nelson LLC, et al.
Filed Date: 10/28/22.
Accession Number: 20221028–5231.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER16–1720–021.
Applicants: Invenergy Energy Management LLC.
Description: Notice of Change in Status of Invenergy Energy Management LLC.
Filed Date: 10/28/22.
Accession Number: 20221028–5225.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER20–1713–003.
Applicants: Evergy Kansas Central, Inc.
Description: Compliance filing: Order No. 864 Compliance Update to be effective 1/27/2020.
Filed Date: 10/28/22.
Accession Number: 20221028–5109.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER20–2040–004.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Prairie Wind Transmission LLC submits tariff filing per 35: Prairie Wind—Order No. 864 Amended Compliance Filing to be effective 1/27/2020.
Filed Date: 10/28/22.
Accession Number: 20221028–5105.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER20–2041–004.
Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Evergy Metro, Inc. submits tariff filing per 35: Evergy Metro, Inc.—Order No. 864 Amended Compliance Filing to be effective 1/27/2020.

Filed Date: 10/28/22.

Accession Number: 20221028–5100.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER20–2042–004.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Evergy Missouri West, Inc. submits tariff filing per 35: Evergy Missouri West—Order No. 864 Amended Compliance Filing to be effective 1/27/2020.

Filed Date: 10/28/22.

Accession Number: 20221028–5099.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER20–2044–005.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Evergy Kansas Central, Inc. submits tariff filing per 35: Evergy Kansas Central—Order No. 864 Amended Compliance Filing to be effective 1/27/2020.

Filed Date: 10/28/22.

Accession Number: 20221028–5162.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER20–686–009.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Compliance Filing to be effective 11/1/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5180.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER21–1225–004; ER22–867–001.

Applicants: Long Ridge Retail Electric Supplier LLC, Long Ridge Energy Generation LLC.

Description: Notice of Non-Material Change in Status of Long Ridge Energy Generation LLC, et al.

Filed Date: 10/28/22.

Accession Number: 20221028–5298.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER21–2137–006.

Applicants: IR Energy Management LLC.

Description: Notice of Change in Status of IR Energy Management LLC.

Filed Date: 10/28/22.

Accession Number: 20221028–5197.

Comment Date: 5 p.m. ET 11/18/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

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Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23938 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15038–001]

Let It Go, LLC; Notice of Intent To Prepare an Environmental Assessment

On December 9, 2021, as supplemented,[1] Let It Go, LLC filed an application for an exemption from licensing for the proposed 20-kilowatt Jefferson Mill Hydroelectric Project (Jefferson Mill Project) (FERC No. 15038). The Jefferson Mill Project would be located on the Hardware River near the Town of Scottsville, Albemarle County, Virginia. The project would not occupy federal land.

In accordance with the Commission's regulations, on July 21, 2022, Commission staff issued a notice that the project was ready for environmental analysis (REA notice). Based on the information in the record, including comments filed on the REA notice, staff does not anticipate that exempting the project from licensing would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to exempt the Jefferson Mill Project from licensing.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's decision on whether to issue an exemption from licensing for the project.

[1] The final exemption application filed December 9, 2021 was supplemented on December 15, 2021, December 28, 2021, and March 9, 2022.

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	April 2023.[2]
Comments on EA	May 2023

Any questions regarding this notice may be directed to Andy Bernick at (202) 502–8660 or *andrew.bernick@ferc.gov.*

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23952 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #3

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–245–000.

Applicants: Frenchtown I Solar, LLC.

Description: Compliance filing: Reactive power informational filing to be effective N/A.

Filed Date: 10/28/22.

Accession Number: 20221028–5158.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–246–000.

Applicants: Happy Jack Windpower, LLC.

Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (Happy Jack) to be effective 12/28/2022.

Filed Date: 10/28/22.

Accession Number: 20221028–5159.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–247–000.

Applicants: Frenchtown II Solar, LLC.

Description: Compliance filing: Reactive power informational filing to be effective N/A.

Filed Date: 10/28/22.

Accession Number: 20221028–5161.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–248–000.

Applicants: Frenchtown III Solar, LLC.

[2] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Jefferson Mill Project. Therefore, in accordance with CEQ's regulations, the EA must be issued within 1 year of the issuance date of this notice.

Description: Compliance filing: Reactive power informational filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5166.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–249–000.
Applicants: Lakehurst Solar, L.L.C.
Description: Compliance filing: Reactive power informational filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5167.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–250–000.
Applicants: PA Solar Park, LLC.
Description: Compliance filing: Reactive power informational filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5169.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–251–000.
Applicants: Pilesgrove Solar, LLC.
Description: Compliance filing: Reactive power informational filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5170.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–252–000.
Applicants: PA Solar Park II, LLC.
Description: Compliance filing: Reactive power informational filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5171.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–253–000.
Applicants: Clean Path New York LLC.
Description: Request of Clean Path New York LLC for Prospective Tariff Waiver of the requirement in Section 25.6.2.3.1 of Attachment S of the NYISO OATT and Expedited Action.
Filed Date: 10/28/22.
Accession Number: 20221028–5174.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–254–000.
Applicants: Oakland Power Company LLC.
Description: § 205(d) Rate Filing: Annual RMR Agreement and Schedule F Informational Filings to be effective 1/1/2023.
Filed Date: 10/28/22.
Accession Number: 20221028–5173.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–255–000.
Applicants: Wabash Valley Power Association, Inc.
Description: § 205(d) Rate Filing: Amendments to FRT for Service to Members to be effective 1/1/2023.
Filed Date: 10/28/22.
Accession Number: 20221028–5175.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–256–000.
Applicants: Silver Sage Windpower, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (Silver Sage) to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5178.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–257–000.
Applicants: San Diego Gas & Electric Company.
Description: § 205(d) Rate Filing: 2023 TRBAA Update to be effective 10/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5182.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–258–000.
Applicants: Palmer Solar, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (Palmer) to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5186.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–259–000.
Applicants: Three Buttes Windpower, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (Three Buttes) to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5190.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–260–000.
Applicants: AEP Generating Company.
Description: § 205(d) Rate Filing: AEP Generating Company Unit Power Agreements to be effective 1/1/2023.
Filed Date: 10/28/22.
Accession Number: 20221028–5192.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–261–000.
Applicants: Hawtree Creek Farm Solar, LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5201.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–262–000.
Applicants: Top of the World Wind Energy, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (TOW) to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5202.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–263–000.
Applicants: ENGIE 2020 ProjectCo-NH1 LLC.
Description: § 205(d) Rate Filing: Notice of Change in Status to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5203.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–264–000.
Applicants: Brantley Farm Solar, LLC.
Description: § 205(d) Rate Filing: SE Category and MBR Tariff Updates to be effective 10/31/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5208.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–265–000.
Applicants: Buckeye Power, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Buckeye Power, Inc. submits tariff filing per 35.13(a)(2)(iii: Revised SA No. 4753—NITSA Among PJM and Buckeye Power, Inc. to be effective 10/1/2021.
Filed Date: 10/28/22.
Accession Number: 20221028–5219.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–266–000.
Applicants: Fox Creek Farm Solar, LLC.
Description: § 205(d) Rate Filing: SE Category and MBR Tariff Updates to be effective 10/31/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5238.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–267–000.
Applicants: Innovative Solar 54, LLC.
Description: § 205(d) Rate Filing: SE Category and MBR Tariff Updates to be effective 10/31/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5244.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–268–000.
Applicants: Innovative Solar 67, LLC.
Description: § 205(d) Rate Filing: SE Category and MBR Tariff Updates to be effective 10/31/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5251.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–269–000.
Applicants: Kit Carson Windpower, LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change of Status & Tariff Amendment Filing (Kit Carson) to be effective 12/28/2022.
Filed Date: 10/28/22.
Accession Number: 20221028–5263.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–270–000.
Applicants: Duke Energy Florida, LLC.
Description: Tariff Amendment: DEF-Gulf Power SA 348 Termination to be effective 12/28/2022.

Filed Date: 10/28/22.
Accession Number: 20221028–5274.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–271–000.
Applicants: Arizona Public Service Company.
Description: Compliance filing: APS–WECC Soft Price Cap Filing to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5275.
Comment Date: 5 p.m. ET 11/18/22.
Docket Numbers: ER23–272–000.
Applicants: Avangrid Renewables, LLC.
Description: Compliance filing: Filing Respecting Spot Sales at Prices Exceeding the WECC ''Soft'' Cap to be effective N/A.
Filed Date: 10/28/22.
Accession Number: 20221028–5279.
Comment Date: 5 p.m. ET 11/18/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23936 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC23–5–000]

Commission Information Collection Activity (FERC–730); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–703 (Report of Transmission Investment Activity).

DATES: Comments on the collections of information are due January 3, 2023.

ADDRESSES: You may submit your comments (identified by Docket No. IC23–5–000) on FERC–730 by one of the following methods:

Electronic filing through *https://www.ferc.gov* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* or by telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–730, Report of Transmission Investment Activity.

OMB Control No.: 1902–0239.

Type of Request: Three-year extension of the FERC–730 information collection requirements with no changes to the current reporting requirements.

Abstract: This collection of information assists the Commission in implementing section 219 of the Federal Power Act (FPA) [1] and 18 CFR 35.35(h), which address incentive-based rate treatments for transmission infrastructure investment. FERC–730 consists of an annual report that includes projections, details on the level and status of transmission investment, and the reason for delay (if any).

The regulation at 18 CFR 35.35(h) requires public utilities that have been granted incentive rate treatment for specific transmission projects to file FERC Form 730 annually, beginning with the calendar year incentive rate treatment is granted by the Commission. Such filings are due by April 18 of the following calendar year and are due April 18 each year thereafter. The following information must be filed:

(1) In dollar terms, actual transmission investment for the most recent calendar year, and projected, incremental investments for the next five calendar years; and

(2) For all current and projected investments (except projects with projected costs less than $20 million) over the next five calendar years, a project-by-project listing that specifies for each project the most up-to-date, expected completion date, percentage completion as of the date of filing, and reasons for delays.

For good cause shown, the Commission may extend the time within which any FERC–730 filing is to be filed or waive the requirements applicable to any such filing.

The Commission uses the FERC–730 information collection to determine an accurate assessment of the state of transmission investment by public utilities. Filers are strongly encouraged to submit the FERC–730 electronically via eFiling.

Type of Respondents: Public utilities that have been granted incentive based rate treatment for specific transmission projects under provisions of 18 CFR 35.35.

Estimate of Annual Burden: [2] The Commission estimates 63 responses annually, and per-response burdens of 30 hours and $2,370. The total estimated burdens per year are 1,890 hours and $171,990. These burdens are itemized in the following table:

[1] 16 U.S.C. 824s.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

A. Number of respondents	B. Annual number of responses per respondent	C. Total number of responses (Column A × Column B)	D. Average burden & cost per response [3]	E. Total annual burden hours & total annual cost (Column C × Column D)	F. Cost per respondent ($) (Column E ÷ Column A)
63	1	63	30 hours; $2,730	1,890 hours; $171,990	$2,730
Totals		63			

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection Techniques Or Other Forms Of Information Technology.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23950 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2362–044]

Allete, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2362–044.

c. *Date filed:* December 20, 2021.

d. *Applicant:* Allete, Inc. (Allete).

e. *Name of Project:* Grand Rapids Hydroelectric Project (Grand Rapids Project).

f. *Location:* On the Mississippi River near the City of Grand Rapids in Itasca County, Minnesota. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. David R. Moeller, Senior Attorney & Director of Regulatory Compliance, ALLETE, Inc., d.b.a. Minnesota Power, 30 West Superior Street, Duluth, MN 55802, 218–723–3963, *dmoeller@allete.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper request. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2362–044.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see *National Environmental Policy Act Implementing Regulations Revisions,* 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The Grand Rapids Project consists of the following existing facilities: (1) a 465-acre reservoir with a water surface elevation of 1,268.2 feet National Geodetic Vertical Datum (NGVD); (2) a 349-foot-long dam consisting of: (a) a 80-foot-long training wall along the right abutment, (b) a 78-foot-long, 21-foot-high concrete gated spillway with six spillway bays, three stoplog gates and three steel slide gates, (c) a 21-foot-long, 12 foot high concrete Tainter gate; (3) a concrete overflow section; (4) intakes consisting of: (a) 16.5 foot-high, 21-foot-long intake (Unit 4,) and (b) 16.5 foot-high, 31-foot-wide intake (Unit 5), both with ⅜ inch bar spacing vertical trash racks; (5) a 60-foot-long, 58-foot-high integral powerhouse that contains one vertical shaft Francis turbine with a total installed capacity of 0.6 megawatts (MW) and one vertical 4 Blade Propeller turbine with a total installed capacity of 1.5 MW.

The Grand Rapids Project is currently operated in a run-of-river mode and generates an annual average of approximately 6,424 megawatt-hours.

[3] The Commission staff estimates that the industry's hourly cost for wages plus benefits is similar to the Commission's $91.00 FY 2022 average hourly cost for wages and benefits.

Allete proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *The license applicant must file no later than 60 days following the date of issuance of this notice:* (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Protest, Motion to Intervene, Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions.	December 2022.
Deadline for Filing Reply Comments	February 2023.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23943 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2361–056]

Allete, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2361–056.

c. *Date filed:* December 20, 2021.

d. *Applicant:* Allete, Inc. (Allete).

e. *Name of Project:* Prairie River Hydroelectric Project (Prairie River Project).

f. *Location:* On the Prairie River, near the Township of Arbo in Itasca County, Minnesota. The project does not include any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David R. Moeller, Senior Attorney & Director of Regulatory Compliance, ALLETE, Inc., d.b.a. Minnesota Power, 30 West Superior Street, Duluth, MN 55802, 218–723–3963, *dmoeller@allete.com.*

i. *FERC Contact:* Laura Washington (202) 502–6072, *Laura.Washington@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper request. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly

D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2361–056.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that federal agencies use to implement the National Environmental Policy Act (NEPA) (see *National Environmental Policy Act Implementing Regulations Revisions,* 87 FR 23,453–70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

l. The Prairie River Project consists of the following existing facilities: (1) a 1,305-acre reservoir with a storage capacity of 15,800 acre-feet at water surface at elevation 1,289.4 ± 0.1 feet National Geodetic Vertical Datum (NGVD); (2) a 985-foot-long dam consisting of: (a) overflow sections, (b) 729-foot-long left embankment with a top elevation of 1.293.6 feet NGVD, (c) a 186-foot-long right embankment with a top elevation of 1,293.6 feet, (d) 260-foot-long concrete emergency spillway with a crest elevation of 1,289.9 feet NGVD, (e) a gated spillway containing two 16-foot-long, 10-foot-high steel Tainter gates with an elevation of 1,280.05 feet NGVD, (f) one 6-foot-long, 6-foot-high steel Tainter gate with an elevation of 1,284.0 feet NGVD, (g) and two 7-foot-long, 6-foot-high timber slide gate bays with an elevation of 1,284.0 feet NGVD; (3) a forebay consisting of: (a) an inlet channel from the main reservoir, (b) an earthen dam, (c) a concrete retaining dam; (4) a 23.5-foot-wide concrete intake structure with a 20-foot-long, 13-foot-high steel Tainter gate, (5) a 20-foot-long, 3-inch deep trashrack with 1.5 inch bar spacing; (6) a 450-foot-long penstock; (7) a 76-foot-long, 28-foot-wide, 43.5-foot-high reinforced concrete powerhouse containing: (a) a steel-lined, reinforced concrete surge tank with a top elevation of 1,301.5 feet NGVD, and (b) two vertical shaft Francis turbines with a total installed capacity of 1.1 megawatts; (8) a 480-foot-long tailrace; and (5) a 2.3/23 kilovolt transmission bank.

The Prairie River Project is currently operated in a run-of-river mode and generates an annual average of approximately 3,087 megawatt-hours. Allete proposes to continue operating the project as a run-of-river facility and does not propose any new construction to the project.

m. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document.

At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnllineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *https://www.ferc.gov/ferc-online/overview* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The license applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please note that the certification request must be sent to the certifying authority and to the Commission concurrently.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Protest, Motion to Intervene, Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions.	December 2022.
Deadline for Filing Reply Comments	February 2023.

q. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23944 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–10–000]

Reliability Technical Conference; Second Supplemental Notice of Technical Conference

As announced in the Notices of Technical Conference issued in this proceeding on August 23, 2022 and October 4, 2022, the Federal Energy Regulatory Commission (Commission) will convene its annual Commissioner-led Reliability Technical Conference in the above-referenced proceeding on Thursday, November 10, 2022, from approximately 12:00 p.m. to 5:00 p.m. Eastern time. The conference will be held in-person at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room.

The purpose of this conference is to discuss policy issues related to the reliability and security of the Bulk-Power System.

The conference will be open for the public to attend, and there is no fee for attendance. Information about this technical conference can be found on the Events Calendar on the Commission's website, *www.ferc.gov.* The conference will also be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact Lodie White at *Lodie.White@ferc.gov* or (202) 502–8453. For information related to logistics, please contact Sarah McKinley at *Sarah.Mckinley@ferc.gov* or (202) 502–8368.

Dated: October 28, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–23939 Filed 11–2–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2022–0053; FRL–10358–01–OA]

National Environmental Justice Advisory Council; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the dates and times described below. The meeting is open to the public. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The NEJAC will convene a hybrid in-person public meeting with a virtual option. The public meeting will start on Tuesday, November 29, 2022, at approximately 2:00 p.m. to 7:00 p.m., Eastern Time. The NEJAC meeting continues Wednesday, November 30, 2022, from approximately 9:00 a.m. to 7:00 p.m., through Thursday, December 1, 2022, from approximately 9:00 a.m. to 5:00 p.m., Eastern Time. The meeting discussions will focus on several topics including, but not limited to, workgroup activity, final recommendations for council consideration, and charges created through collaborations with various EPA national program offices. A public comment period relevant to the way in which environmental justice (EJ) and equity are incorporated into finance and investments at the Environmental Protection Agency will be considered by the NEJAC at the meeting (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must register by 11:59 p.m., Eastern Time, November 23, 2022.

ADDRESSES: The NEJAC meeting will be held at The Westin Alexandria Old Town, 400 Courthouse Square, Alexandria, Virginia, USA, 22314–5700.

FOR FURTHER INFORMATION CONTACT: Paula Flores-Gregg, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* telephone number: (214) 665–8123. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council.*

SUPPLEMENTARY INFORMATION: The Charter of the NEJAC states that the advisory committee ''will provide independent advice and recommendations to the Administrator about broad, cross-cutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.''

I. Registration

Individual registration is required for the public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meeting is available through the scheduled meeting days. The deadline to sign up to speak during the public comment period will close at 11:59 p.m., Eastern Time, November 23, 2022. When registering, please provide your name, organization, city and state, and email address. Please also indicate whether you would like to provide oral public comment during the meeting, or whether you are submitting written comments at time of registration.

A. Public Comment

The NEJAC is interested in receiving public comments on several topics including, but not limited to, the way in which environmental justice (EJ) and equity are incorporated into finance and investments at the Environmental Protection Agency. The NEJAC would also like feedback on the related topics of measuring demonstrable outcomes; prioritizing resources in legacy communities; addressing harmful air, soil, water; and other environmental impacts in U.S. states, territories, and tribal nations. Every effort will be made to hear from as many registered oral public commenters during the time specified on the agenda. Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the NEJAC to advise the EPA to do. Submitting written

comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1.) by using the webform at *https://www.epa.gov/environmentaljustice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2.) by sending comments via email to *nejac@epa.gov* and (3.) by creating comments in the Docket ID No. EPA–HQ–OA–2022–0053 at *http://www.regulations.gov.* Written comments can be submitted through December 14, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Paula Flores-Gregg, at (214) 665–8123 or via email at *nejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2022–23926 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2022–0050; FRL–10359–01–OA]

White House Environmental Justice Advisory Council; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the White House Environmental Justice Advisory Council (WHEJAC) will meet on the dates and times described below. The meeting is open to the public. For additional information about registering to attend the meeting or provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-Registration is required.

DATES: The WHEJAC will convene a hybrid in-person public meeting with a virtual option starting Wednesday, November 30, 2022, at approximately 2:00 p.m. Eastern Time. The WHEJAC meeting continues Thursday, December 1, 2022, at approximately 9:00 a.m. Eastern Time. Meeting discussions will focus on several topics including, but not limited to, workgroup activity, proposed recommendations for the Council on Environmental Quality's (CEQ) consideration, CEQ briefings, new charges, and interaction between the White House Interagency Council on Environmental Justice and WHEJAC. A public comment period relevant to the specific issues will be considered by the WHEJAC at the meeting (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must register by 11:59 p.m., Eastern Time, November 23, 2022.

ADDRESSES: The WHEJAC meeting will be held at the Westin Alexandria Old Town, 400 Courthouse Square in Alexandria, Virginia 22314–5700.

FOR FURTHER INFORMATION CONTACT: Victoria Robinson, WHEJAC Designated Federal Officer, U.S. EPA; email: *whejac@epa.gov;* or by telephone at (202) 564–6349. Additional information about the WHEJAC is available at: *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council#meetings.*

SUPPLEMENTARY INFORMATION: The Charter of the WHEJAC states that the advisory committee will provide independent advice and recommendations to the Chair of the CEQ and to the White House Interagency Council on how to increase the Federal Government's efforts to address current and historic environmental injustice, including recommendations for updating Executive Order 12898.

The WHEJAC will provide advice and recommendations about broad cross-cutting issues related but not limited to issues of environmental justice and pollution reduction, energy, climate change mitigation and resiliency, environmental health, and racial inequity. The WHEJAC's efforts will include a broad range of strategic, scientific, technological, regulatory, community engagement, and economic issues related to environmental justice.

I. Registration

Individual registration is required for the virtual public meeting. No two individuals can share the same registration link. Information on how to register is located at *https://www.epa.gov/environmentaljustice/white-house-environmental-justice-advisory-council#meetings.* Registration to attend the public meeting is available throughout the duration of the meeting days. The deadline to sign up to speak during the in-person public comment period will close at 11:59 p.m. Eastern Time on November 23, 2022. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you are interested in providing an oral public comment during the meeting, or if you will submit written comments at the time of registration.

A. Public Comment

The WHEJAC is interested in receiving public comments on a variety of topics related to environmental justice. Every effort will be made to hear from as many registered oral public commenters during the time specified on the agenda. Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments; including your recommendations on what you want the WHEJAC to advise CEQ and the Interagency Council to do. Submitting written comments for the record is strongly encouraged. You may submit your written comments in three different ways; (1) by using the webform at *https://www.epa.gov/environmentaljustice/forms/white-house-environmental-justice-advisory-council-whejac-public-comment;* (2) by sending comments via email to *whejac@epa.gov;* and (3) by creating comments in the Docket ID No. EPA–HQ–OA–2022–0050 at *http://www.regulations.gov.* Written comments can be submitted up to two weeks after the meeting closes on December 14, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, contact Victoria Robinson at (202) 564–6349 or via email at *whejac@epa.gov.* To request special accommodations for a disability or other assistance, please submit your request at least fourteen (14) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the address, email, or

phone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Deputy Assistant Administrator for Environmental Justice, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2022–23927 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2022–0861; FRL–10385–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is hereby given of a proposed consent decree in *Sierra Club, et al.* v. *Regan,* No. 3:22–cv–01992–JD (N.D. Cal.). On March 29, 2022, Plaintiffs Sierra Club, Air Alliance Houston, Center for Biological Diversity, Citizens for Pennsylvania's Future, Clean Air Council, and Texas Environmental Justice Advocacy Services filed a complaint in the United States District Court for the Northern District of California alleging that the Environmental Protection Agency (EPA or the Agency) failed to perform a non-discretionary duty in accordance with the Act to promulgate Federal Implementation Plans (FIPs) to address the ''Good Neighbor'' requirements of the CAA for the 2015 ozone national ambient air quality standards (NAAQS) for four states: Pennsylvania, Utah, Virginia, and New Mexico. The proposed consent decree would establish deadlines for EPA to take specified actions.

DATES: Written comments on the proposed consent decree must be received by December 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0861, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rosemary Hambright Kaban, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–8829; email address *kaban.rosemary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2022–0861) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Sierra Club et al. seeking to compel the Administrator to promulgate FIPs for the States of Pennsylvania, Utah, Virginia, and New Mexico to satisfy the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. On October 1, 2015, EPA promulgated a final rule revising the ozone NAAQS. Effective January 6, 2020, EPA determined that New Mexico, Pennsylvania, Utah and Virginia had ''not submitted [a] complete interstate transport [SIP] to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS.'' [1] This action established a 2-year deadline under CAA section 110(c)(1) for EPA to promulgate FIPs for New Mexico, Pennsylvania, Utah, and Virginia to satisfy these requirements unless, before EPA promulgates such FIPs, the State submits and EPA approves a state implementation plan (SIP) that meets these requirements.

Under the terms of the proposed consent decree, no later than March 15, 2023, EPA must sign a final rule or rules taking one or more of the following actions with respect to the States of Pennsylvania, Utah, and Virginia to meet the requirements of CAA section 110(a)(2)(D)(i)(I) regarding prohibiting significant contribution to nonattainment or interference with maintenance in other states for the 2015 ozone NAAQS: (a) promulgate a FIP; (b) approve a SIP; or (c) partially approve a SIP in conjunction with promulgating a partial FIP. In addition, under the terms of the proposed consent decree, no later than June 1, 2024, EPA must sign a final rule or rules taking one or more of the following actions with respect to the State of New Mexico to meet the requirements of CAA section 110(a)(2)(D)(i)(I) regarding prohibiting significant contribution to nonattainment or interference with maintenance in other states for the 2015 ozone NAAQS: (a) promulgate a FIP; (b) approve a SIP; or (c) partially approve a SIP in conjunction with promulgating a partial FIP.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0861, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

[1] 84 FR 66612, 66614 (December 5, 2019).

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2022–23909 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEI–2014–0466; FRL–10120–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support, Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Mission Support, Administration and Resources Management (OMS–ARM) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974. The Labor and Employee Relations Information System (LERIS) is being modified to change the name and location of the system to Labor and Employee Relations Tracking System (LERTS), per a vendor change. Additionally, EPA is modifying the SORN previously published in 2014 to update the system manager name and to add applicable routine uses. The purpose of the system is to allow Labor and Employee Relations (LER) specialists to track, manage and report on a full spectrum of labor and employee relations cases throughout the Agency.

DATES: Persons wishing to comment on this system of records notice must do so by December 5, 2022. New routine uses for this modified system of records will be effective December 5, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2014–0466, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2014–0466. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752. Further information about EPA Docket Center services and current operating status is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Phil Brown, *Brown.Phil@epa.gov,* 202–564–2607, Director, Labor and Employee Relations Division (LERD), Office of Human Resources (OHR), Office of Mission Support (OMS), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: LERIS is being modified to (1) change the name of the system to LER Tracking System (LERTS), (2) update the location, both per a vendor change, (3) update the system manager per organizational changes, and (4) add applicable routine uses F, G, H, I, J, K, and M per Agency policy and practice, and OMB Memorandum M–17–12. The system will continue to be used by EPA LER personnel to track, manage, and report on a full spectrum of labor and employee relations cases throughout the Agency.

SYSTEM NAME AND NUMBER:

Labor and Employee Relations Tracking System (LERTS), EPA–68.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The EPA component responsible for the system is LERD, OHR, OMS, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Records are hosted by AINS, Inc., (an EPA contractor) 806 W Diamond Ave. #400, Gaithersburg, Maryland 20878.

SYSTEM MANAGER(S):

Phil Brown, *Brown.Phil@epa.gov,* 202–564–2607, Director, LERD, OHR, OMS, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 71; 5 U.S.C. Chapter 43; 5 U.S.C. Chapter 75; 5 CFR 771; 5 CFR 752; 5 CFR 432.

PURPOSE(S) OF THE SYSTEM:

These records are maintained in LERTS to administer EPA's Labor and Employee Relations program. Records in LERTS have various uses by Agency personnel offices, including employee's rights and benefits under pertinent laws and regulations governing Federal employment; and other information needed to provide personnel services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EPA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system will contain general human resources elements, including: Name, Appointment Type and Dates, Position Title, Pay Plan, Occupational Series, Grade, Step, Supervisory Code, Bargaining Unit Status Code, and Duty Station. The system will contain Labor Relations case file information regarding grievances, union information requests, negotiations, unfair labor practice (ULP) charges, and unit clarification petitions. The system will contain Employee Relations case file information regarding management/employee counseling matters, including: conduct actions, performance-based actions, internal investigations, reasonable accommodation requests, and labor and employment litigation.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained, Agency officials such as managers and supervisors, union or legal representatives, and HR personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (*86 FR 62527, November 10, 2021*): A, B, C, D, E, F, G, H, I, J, K, L, and M apply to this system.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are stored in computers, removable drives, storage devices, electronic databases, servers, and other electronic media hosted by AINS, Inc.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the employee identification number or name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records stored in the system are subject to records schedule 756.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in Labor and Employee Relations Tracking System (LERTS) are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in National Institute of Standards and Technology (NIST) Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. Administrative Safeguards: Information Security and Privacy Awareness Training is completed by all EPA personnel at least annually. EPA Rules of Behavior are reviewed and signed by EPA personnel at least annually. Security and privacy controls assessments are performed by a third-party assessment organization annually. In addition: AINS, Inc. ensures its employees complete security awareness and role-based training.

2. Technical Safeguards: Role-based access control for all users. Multi-factor authentication via Agency VPN access (PIV/PIN) and Single sign-on. Audit log generation of system-level events, which is reviewed weekly. LERTS uses Digicerts digital security Certificates, Transport Layer Security (TLS), and is accessible only using https protocol. LERTS also utilizes anti-virus, content filtering, and firewalls for intrusion prevention/detection.

3. Physical Safeguards: Physical access to AINS, Inc. servers is limited to: Authorized personnel lists via access controls. Site monitoring 24x7 via security cameras and security staff. Limited access (via digital code and bio-metric scanner) to system transmission lines. Secured power equipment and cabling (protected from environmental factors and covered with conduit).

RECORD ACCESS PROCEDURES:

All requests for access to personal records should cite the Privacy Act of 1974 and reference the type of request being made (*i.e.,* access). Requests must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a statement whether a personal inspection of the records or a copy of them by mail is desired; and (4) proof of identity. A full description of EPA's Privacy Act procedures for requesting access to records is included in EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and (4) proof of identity. A full description of EPA's Privacy Act procedures for the correction or amendment of a record is included in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURES:

Individuals who wish to be informed whether a Privacy Act system of records

maintained by EPA contains any record pertaining to them, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or by email at: *privacy@epa.gov.* A full description of EPA's Privacy Act procedures is included in EPA's Privacy Act regulations at 40 CFR part 16.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

79 FR 65393—Established a new System of Records for the Labor and Employee Relations Information System (LERIS) (November 4, 2014).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2022–23908 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2021–0762; FRL–9153–03–OLEM]

Strategy To Reduce Lead Exposures and Disparities in U.S. Communities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) is releasing its Strategy to Reduce Lead Exposures and Disparities in U.S. Communities. The EPA developed this strategy to lay out the Agency's plan to strengthen public health protections, address legacy lead contamination for communities with the greatest exposures, and promote environmental justice and equity.

DATES: November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Matthew Lambert, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code: 5204T, Washington, DC 20460; telephone number: (202) 566–1385; email address: *lambert.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Today, the U.S. Environmental Protection Agency (EPA) is pleased to announce the public release of its Strategy to Reduce Lead Exposures and Disparities in U.S. Communities (Lead Strategy). The Lead Strategy advances EPA's work to protect the public from lead with an emphasis on high-risk communities and is part of the Agency's commitment to fulfilling President Biden's Executive Order on Advancing Equity and Support for Underserved Communities Through the Federal Government. The Lead Strategy also reflects EPA's commitment to fulfilling the Biden-Harris Administration's historic commitment of resources to replace lead pipes and support lead paint removal under the Lead Pipe and Paint Action Plan.

Adverse effects on intellect, ability to pay attention, and academic achievement have been linked to very low levels of lead in children's blood. These effects may have later-in-life impacts on an exposed individual's quality of life. Additionally, longer-term lead exposure over a lifetime is associated with increased risk of other effects, such as increased blood pressure and hypertension, which can lead to coronary heart disease. The Lead Strategy describes specific actions the Agency will take to prevent childhood lead exposures and exposure inequities that could lead to lifelong health effects and barriers to social and economic well-being

On October 28, 2021, EPA released a draft version of the Lead Strategy and solicited feedback from the public through March of 2022. During the public comment period, EPA hosted eleven public listening sessions on the draft Lead Strategy, one in each of EPA's ten geographic regions and an engagement session for tribes. The public also submitted hundreds of substantive written comments about the draft Lead Strategy and thousands of additional comments were submitted through mass comment campaigns. As a result of this concerted outreach, EPA received feedback from a wide array of stakeholders and community members from around the country. Public commenters shared many ideas and perspectives on how to improve the Lead Strategy and how EPA and the whole of government can better address lead contamination in communities. EPA has carefully considered the comments received on the draft Lead Strategy.

Implementation of EPA's Lead Strategy will result in the Agency taking more effective and efficient actions to minimize lead exposures with an emphasis on overburdened communities and promoting environmental justice and equity. The Lead Strategy includes performance measures and milestones the Agency will use to track and measure its progress in meeting the goals and objectives set forth in the strategy. These performance measures and milestones demonstrate EPA's commitment to addressing legacy lead contamination by strengthening public health protections from all routes of lead exposure.

Dated: October 27, 2022.

Carlton Waterhouse,

Deputy Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2022–23903 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10278–01–OAR; SAN 10278]

Clean Air Act Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the Clean Air Act Advisory Committee (CAAAC) is necessary and in the public interest in connection with the performance of duties imposed on the agency by law. Accordingly, CAAAC will be renewed for an additional two-year period. The purpose of the CAAAC is to provide advice and recommendations to the EPA Administrator on policy issues associated with implementation of the Clean Air Act. Inquiries may be directed to Lorraine Reddick, CAAAC Designated Federal Officer, U.S. EPA, 1200 Pennsylvania Avenue NW (6101), Washington, DC 20460, or by email to *reddick.lorraine@epa.gov.*

Joseph Goffman,

Principal Deputy Assistant Administrator.

[FR Doc. 2022–23958 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2022–0838; FRL–10297–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (CAA or the Act), notice is given of a proposed consent decree in *Center for Community Action and Environmental Justice* v. *EPA,* No. 22-cv-04191 (N.D. Cal, July 19, 2022). On July 19, 2022, Plaintiff Center for

Community Action and Environmental Justice filed a complaint in the United States District Court for the Northern District of California, Oakland Division. Plaintiff alleged that the Environmental Protection Agency (EPA or the Agency) failed to take action on a California State Implementation Plan (SIP) submission by the required deadline. The proposed consent decree would establish a deadline for EPA to take action on the submission.

DATES: Written comments on the proposed consent decree must be received by *December 5, 2022.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0838, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Seth Buchsbaum, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564–2484; email address *buchsbaum.seth@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2022–0838) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit filed by Center for Community Action and Environmental Justice seeking to compel the Agency to approve, disapprove, or conditionally approve, in whole or in part, the Innovative Clean Transit (ICT) Regulation adopted by the California Air Resources Board (CARB) and submitted as a revision to the California SIP on February 13, 2020.

Under the terms of the proposed consent decree, EPA shall sign a notice of final rulemaking approving, disapproving, conditionally approving, or approving in part and disapproving in part the ICT Regulation SIP submission by January 16, 2023. The proposed consent decree provides that if the State withdraws the ICT Regulation SIP submission, EPA's obligation to take action is terminated.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2022–0838, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2022–23906 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 10289–01–OAR]

Announcing Upcoming Meeting of Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency (EPA) announces an upcoming meeting of the Mobile Sources Technical Review Subcommittee (MSTRS), which is a subcommittee under the Clean Air Act Advisory Committee (CAAAC). This is a hybrid (both in-person and virtual) meeting and open to the public. The meeting will include discussion of current topics and presentations about activities being conducted by EPA's Office of Transportation and Air Quality. MSTRS listserv subscribers will receive notification when the agenda is available on the Subcommittee website. To subscribe to the MSTRS listserv, send an email to *MSTRS@epa.gov.*

DATES: EPA will hold a hybrid (both in-person and virtual) public meeting on Wednesday November 30, 2022, from 10 a.m. to 5 p.m. Eastern Daylight Time (EDT). Please monitor the website *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac* for any changes to meeting logistics. The final meeting agenda will be posted on the website.

ADDRESSES: For information on the public meeting or to register to attend, please contact *MSTRS@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to attend the meeting or provide comments should express this intent by emailing *MSTRS@epa.gov* no later than Wednesday November 16, 2022. Further information concerning this public meeting and general information concerning the MSTRS can be found at: *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* Other MSTRS inquiries can be directed to Julia Burch, the Designated Federal Officer for MSTRS, Office of Transportation and Air Quality, at 202–564–0961 or *burch.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: During the meeting, the Subcommittee may also hear progress reports from its workgroups as well as updates and announcements on Office of Transportation and Air Quality activities of general interest to attendees.

Participation in hyrbid public meetings. The hybrid (both in-person and virtual) public meeting will provide interested parties the opportunity to participate in this Federal Advisory Committee meeting.

EPA is asking all meeting attendees, even those who do not intend to speak, to register for the meeting by sending an email to the address listed in the **FOR FURTHER INFORMATION CONTACT** section above, by Wednesday November 16, 2022. This will help EPA ensure that sufficient participation capacity will be available.

Please note that any updates made to any aspect of the meeting logistics, including potential additional sessions, will be posted online at *https://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.* While EPA expects the meeting to go forward as set forth above, please monitor the website for any updates.

For individuals with disabilities: For information on access or services for individuals with disabilities, please email *MSTRS@epa.gov.* To request accommodate of a disability, please email *MSTRS@epa.gov,* preferably at least 10 business days prior to the meeting, to give EPA as much time as possible to process your request.

Julia Burch,

Designated Federal Officer, Mobile Source Technical Review Subcommittee, Office of Transportation and Air Quality.

[FR Doc. 2022–23905 Filed 11–2–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0953; FR ID 112457]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before December 5, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information

collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0953.

Title: Section 95.2309, Frequency Coordination/Coordinator, Wireless Medical Telemetry Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and Not-for-profit institutions.

Number of Respondents and Responses: 3,000 respondents; 3,000 responses.

Estimated Time per Response: 2–5 hours.

Frequency of Response: On occasion and one-time reporting requirements, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 4(i), 302, 303(b), (c), (e), (f), (r), and 307.

Total Annual Burden: 15,000 hours.

Total Annual Cost: $750,000.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Needs and Uses: The Commission will submit this information collection to OMB as an extension after this 60-day comment period to obtain the full three-year clearance from them. On March 20, 2019, the Federal Communications Commission released a Report and Order and Order on Reconsideration, Amendment of Part 15 of the Commission's Rules for Unlicensed White Space Devices, Amendment of Part 15 of the Commission's Rules for Unlicensed Operations in the Television Bands, Repurposed 600 MHz Band, 600 MHz Guard Bands and Duplex Gap, and Channel 37; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, ET Docket Nos. 16–56, 14–165, GN Docket No 12–268 and RM–11745, FCC 19–24. The Federal Communications Commission restored previously deleted rule text to a new Section 95.2309 (h), which states that parties operating WMTS networks on Channel 37 (608–614 MHz) must notify one of the white space database administrators of their operating location to obtain interference protection from white space devices. The reinstatement did not impose any new requirements that would be subject to this collection of information.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–23965 Filed 11–2–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.676]

Announcement of the Intent To Award Single-Source Awards for Long Term Foster Care

AGENCY: Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Issuance of Single-Source Awards.

SUMMARY: ACF, ORR announces the intent to award five single-source awards in the amount of $9,118,248, in multiple states across the country, for Long Term Foster Care (LTFC) services for Unaccompanied Children. ORR proposes to have the recipient conduct the following activities: provide additional capacity for long term placement services. The action is needed because ORR has a pending list with over 300 minors on it who need LTFC placement due to the unanticipated influx of unaccompanied children at the southwestern border in 2021 and the unforeseen arrival of Unaccompanied Afghan Minors (UAM) over the past year.

DATES: The proposed period of performance is October 1, 2022, through April 30, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Kiesler, Director, Division of Unaccompanied Alien Children Operations, 330 C Street SW, Washington, DC 20447. Phone: 202–893–5037. Email: *laura.kiesler@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: ORR is continuously monitoring its capacity to shelter the unaccompanied children referred to LTFC services, as well as the information received from interagency partners to inform any future decisions or actions.

ORR has specific requirements for the provision of services. Award recipients must have the infrastructure, licensing, experience, and appropriate level of trained staff to meet those requirements.

ORR announces the intent to award the following single-source awards:

Recipient name	City & state	Proposed period of support budget (10/1/22–4/30/23)
Lutheran Immigration and Refugee Services	Moreno Valley, CA, Newport News, VA, & York, PA	$1,653,049
Bethany Christian Services	Fresno and Modesto, CA & Grand Rapids, MI	3,958,841
Building Bridges Foster Family Agency	Southern CA	974,839
New Life Foster Family Agency	Colton, CA	1,465,532
Board of Child Care	Nicholasville and Owensboro, KY & Redford Charter TWP, MI.	1,065,987
Total of Awards		9,118,248

Statutory Authority: This program is authorized by:

(A) Section 462 of the Homeland Security Act of 2002, which in March 2003, transferred responsibility for the care and custody of unaccompanied alien children from the Commissioner of the former Immigration and Naturalization Service to the Director of ORR within HHS.

(B) The Flores Settlement Agreement, Case No. CV85–4544RJK (C. D. Cal. 1996), as well as the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub. L. 110–457), which authorizes post release services under certain conditions to eligible children. All programs must comply with the Flores Settlement Agreement, Case No. CV85–4544–RJK (C.D. Cal. 1996); pertinent regulations; and ORR policies and procedures.

(C) The Afghanistan Supplemental Appropriations Act, 2022, and Additional Afghanistan Supplemental Appropriation Act, 2022, designated funding for citizens and nationals of Afghanistan including UAM (Pub. L. 117–43 and Pub. L. 117–70). This funding is available to the Unaccompanied Children Program and is utilized by ORR to support the care and custody of UAM.

Elizabeth A. Leo,

Senior Grants Policy Specialist, Office of Grants Policy, Office of Administration.

[FR Doc. 2022–23960 Filed 11–2–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1961]

Advancing Premarket Safety Analytics Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is requesting comments on the topics discussed at a public workshop entitled ''Advancing Premarket Safety Analytics Workshop'' held on September 14, 2022. The purpose of the public workshop was to present FDA's work and perspective on premarket review of safety data.

DATES: Either electronic or written comments on this public workshop must be submitted by December 5, 2022. See the **SUPPLEMENTARY INFORMATION** section for information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 5, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–1961 for ''Advancing Premarket Safety Analytics Workshop.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Christopher Smith, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6230, Silver Spring, MD 20993, 301–796–4851, *christopher.smith2@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Because of a lack of standardization of safety data analysis and visualization, inconsistencies have been noted in how adverse events are defined, categorized, analyzed, and presented in marketing applications. The FDA Center for Drug Evaluation and Research's (CDER's)

Office of New Drugs (OND) led the development of two documents to facilitate internal review of safety data. The first document, ''FDA Medical Queries,'' provides a standardized approach to group preferred terms of adverse events using ''Medical Dictionary for Regulatory Activities'' (MedDRA) terminology. The second document, ''Standard Safety Tables and Figures Integrated Guide,'' provides standardized methods for visualization of clinical trial safety data into tables and figures. FDA values transparency and collaboration with external stakeholders; therefore, both documents are available for public comment through the docket.

II. Topics Discussed at the Public Workshop

At the public workshop entitled ''Advancing Premarket Safety Analytics Workshop,'' CDER's OND presented its work and perspective related to safety analytics. The workshop provided presentations from FDA staff on the two documents ''FDA Medical Queries'' and ''Standard Safety Tables and Figures Integrated Guide '' (meeting materials available at *https://healthpolicy.duke.edu/events/advancing-premarket-safety-analytics*). The workshop also included panel discussions with industry representatives on ''Stakeholder Perspectives Exploring Premarket Adverse Event Grouping'' and ''Examining Strategies for Adverse Event Analysis.'' FDA documents were intended as a starting point for broader discussions on best practices and innovative approaches for advancing premarket safety signal analytics. We are also seeking comment on the topics discussed at the workshop.

Dated: October 31, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23925 Filed 11–2–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0341]

Agency Information Collection Activities; Proposed Collection; Comment Request; Federal-State Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions associated with FDA's Federal-State Food Regulatory Program Standards.

DATES: Either electronic or written comments on the collection of information must be submitted by January 3, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 3, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–N–0341 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Food Safety; Federal-State Food Regulatory Program Standards.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the

docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Rachel Showalter, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–994–7399, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Federal-State Food Regulatory Program Standards

OMB Control Number 0910–0760—Revision

This information collection supports FDA's Animal Food (formerly ''Feed'') Regulatory Program Standards (AFRPS) and Egg Regulatory Program Standards (ERPS). In the United States, Federal and State government agencies ensure the safety of human and animal food. FDA is responsible for ensuring that all human and animal food moving in interstate commerce, except those under the U.S. Department of Agriculture jurisdiction, are safe, wholesome, and labeled properly. States are responsible for conducting inspections and regulatory activities that help ensure human and animal food a produced, processed, and distributed within their jurisdictions are safe and in compliance with State laws and regulations. States primarily perform inspections under their own regulatory authority. Some States conduct inspections of human and animal food facilities under contract with FDA. Because jurisdictions may overlap, FDA and States collaborate and share resources to protect human and animal food.

The FDA Food Safety Modernization Act calls for enhanced partnerships and provides a legal mandate for developing an Integrated Food Safety System (IFSS). FDA is committed to implementing an IFSS thereby optimizing coordination of human and animal food safety efforts with Federal, State, local, tribal, and territorial regulatory and public health agencies. Model standards provide a consistent, underlying foundation that is critical for uniformity across State and Federal agencies to ensure credibility of human and animal food programs within the IFSS. The AFRPS and ERPS provide a uniform and consistent approach to animal food and egg regulation in the United States. Implementation of the AFRPS and ERPS are voluntary.

The AFRPS and ERPS are the frameworks that each State should use to design, manage, and improve its animal food or egg regulatory program. The AFRPS standards include the following: (1) regulatory foundation; (2) training program; (3) inspection program; (4) audit program; (5) animal food-related illnesses or death and emergency response; (6) compliance and enforcement program; (7) outreach program; (8) planning and resources; (9) assessment and improvement; (10) laboratory services; and (11) sampling program. The ERPS include equivalent standards for egg regulatory programs except they do not include a separate standard 11 sampling program. Each standard has a purpose statement, requirement summary, description of program elements, projected outcomes, and a list of required documentation. When a state program voluntarily agrees to implement the standards, it must fully implement and maintain the individual program elements and documentation requirements in each standard in order to fully implement the standard. We invite you to visit our website (*https://www.fda.gov/federal-state-local-tribal-and-territorial-officials/national-integrated-food-safety-system-ifss-programs-and-initiatives/regulatory-program-standards*) for more information and to access the program standards.

Both the AFRPS and ERPS package include forms, worksheets, and templates to help the State program assess and meet the program elements in the standard. State programs are not obligated to use the forms, worksheets, and templates. Other manual or automated forms, worksheets, and templates may be used as long as the pertinent data elements are present. Records and other documents specified in the AFRPS and ERPS must be maintained in good order by the state program and must be available to verify the implementation of each standard.

As set forth in the AFRPS and ERPS, the state program is expected to review and update its improvement plan on an annual basis. The state program completes an evaluation of its implementation status at least every 3 years following the baseline evaluation by reviewing and updating the self-assessment worksheets and required documentation for each standard. The evaluation is needed to determine if each standard's requirements are, or remain, fully met, partially met, or not met. The state program revises the improvement plan based upon this evaluation.

In collaboration with the State Governments, FDA recently completed a revision of the animal food program standards that incorporated the most current knowledge and lessons learned in the application of the 2020 AFRPS by State partners and program assessment by FDA. In an effort to improve program effectiveness, understanding and clarity, changes to the AFRPS include those to program definitions, all 11 program standards, appendices and assessment worksheets that may be used by the States who have adopted the AFRPS. Such changes include updates to terminology, most notably replacing the term ''animal feed'' with ''animal food'' consistent with the terminology of the FDA Food Safety Modernization Act, and minor editorial changes. Other changes include streamlining both the standards and appendices to be less prescriptive in nature and better focus on information capture needs. This process results in an overall reduction of 11 appendices (most of which provided more program specific guidance or examples and therefore are not expected to change the burden) and a reformatting of the remaining

appendices to be more uniform, succinct and tabular in structure. The revised program standards are the result of external collaboration and coordination between FDA and the Association of American Feed Control Officials (AAFCO) in which we consider any formal comments received on the 2020 edition of the program standards and feedback obtained from our collaboration with the States. A copy of the revised program standards is available in the docket.

Description of Respondents: Respondents are State Departments of Agriculture or Health enrolled in the AFRPS or ERPS (State Governments).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondents; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
State, local, Territorial, and/or Tribal Governments; submission of data elements to FDA consistent with AFRPS	25	1	25	569	14,225
State, local, Territorial and/or Tribal Governments; submission of data elements to FDA consistent with ERPS	10	1	10	569	5,690
Total	.....	.....	.....	.....	19,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondents; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
State, local, Territorial, and/or Tribal Governments; submission of data elements to FDA consistent with AFRPS	25	11	275	40	11,000
State, local, Territorial and/or Tribal Governments; submission of data elements to FDA consistent with ERPS	10	10	100	40	4,000
Total	.....	.....	.....	.....	15,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

No change in burden is expected to be incurred with the implementation of the revised AFRPS. However, we have adjusted the number of respondents to the information collection associated with the AFRPS to reflect a reduction in enrollment since our last evaluation. In addition, based on the Agency's experience over the past 3 years, we have added reporting burden and adjusted the recordkeeping burden estimates associated with the AFRPS and ERPS, resulting in an increase in responses and burden hours.

Dated: October 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23919 Filed 11–2–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–2107]

Cross Labeling Oncology Drugs in Combination Regimens; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Cross Labeling Oncology Drugs in Combination Regimens.'' This guidance describes FDA's current recommendations on including relevant information in labeling for oncology drugs approved for use in combination regimens. This guidance finalizes the draft guidance of the same title issued on November 20, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on November 3, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–2107 for ''Cross Labeling Oncology Drugs in Combination Regimens.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Marc Theoret, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2218, Silver Spring, MD 20993, 301–796–4099; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Cross Labeling Oncology Drugs in Combination Regimens.'' This guidance describes FDA's current recommendations on including relevant information in labeling for oncology drugs approved for use in combination regimens.

This guidance finalizes the draft guidance of the same title issued on November 20, 2020 (85 FR 74352). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include clarity on our recommendations for the content of each section of the prescribing information, including how doses or dosage modifications for any other drug in the combination regimen should be described in labeling.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Cross Labeling Oncology Drugs in Combination Regimens.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314, including the submission of labeling in 21 CFR 314.50(e)(2)(ii) and (l)(1)(i) and the submission of new drug applications (NDAs) and supplemental NDAs, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 312 regarding the submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information for the content and format of prescription drug labeling in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in FDA's guidance entitled ''Formal Meetings Between FDA and Sponsors and Applicants for PDUFA Products'' have been approved under OMB control number 0910–0429.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–23866 Filed 11–2–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Request for Public Comment on Two Draft Recommendations To Update the HRSA-Supported Women's Preventive Services Guidelines Relating to Screening for Diabetes in Pregnancy and Screening for Type 2 Diabetes After Pregnancy

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice seeks comments on two draft recommendations to update the HRSA-Supported Women's Preventive Services Guidelines (''Guidelines'') relating to Screening for Diabetes in Pregnancy and Screening for Type 2 Diabetes after Pregnancy. The existing Guidelines address Screening for Gestational Diabetes Mellitus (GDM) and Screening for Diabetes Mellitus after Pregnancy. These draft recommendations have been developed through a cooperative agreement, known as the Women's Preventive Services Initiative (WPSI), with the American College of Obstetricians and Gynecologists (ACOG), through which they convene health professionals to develop draft recommendations. Under applicable law, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage must include coverage, without cost sharing, for certain preventive services, including those provided for in the HRSA-supported Guidelines. The Departments of Labor, Health and Human Services, and the Treasury have previously issued regulations, which describe how group health plans and health insurance issuers apply the coverage requirements.

DATES: Members of the public are invited to provide written comments no later than December 5, 2022. All comments received on or before this date will be reviewed and considered by WPSI and provided for further consideration by HRSA in determining the recommended updates that it will support.

ADDRESSES: Members of the public who wish to provide comments can do so by accessing the public comment web page at *https://www.hrsa.gov/womens-guidelines.*

FOR FURTHER INFORMATION CONTACT: Kimberly Sherman, HRSA, Maternal and Child Health Bureau, telephone (301) 443–8283, email: *wellwomancare@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under section 1001(5) of the Patient Protection and Affordable Care Act, Public Law 111–148, which added section 2713 to the Public Health Service Act, 42 U.S.C. 300gg–13, the preventive care and screenings set forth in the Guidelines are required to be covered without cost-sharing by certain group health plans and health insurance issuers. HRSA established the Guidelines in 2011 based on expert recommendations by the Institute of Medicine, now known as the National Academy of Medicine, developed under a contract with the Department of Health and Human Services. Since 2011, there have been advancements in science and gaps identified in these guidelines, including a greater emphasis on practice-based clinical considerations. Accordingly, since March 2016, HRSA has funded cooperative agreements with ACOG, known as the WPSI, to convene a coalition representing clinicians, academics, and consumer-focused health professional organizations to conduct a rigorous review of current scientific evidence, solicit and consider public input, and make recommendations to HRSA regarding updates to the Guidelines to improve adult women's health across the lifespan. HRSA then determines whether to support, in whole or in part, the recommended updates to the Guidelines. Under the cooperative agreement, ACOG formed WPSI, consisting of an Advisory Panel and two expert committees, the Multidisciplinary Steering Committee and the Dissemination and Implementation Steering Committee, which are comprised of a broad coalition of organizational representatives who are experts in disease prevention and women's health issues. With oversight by the Advisory Panel, and with input from the Multidisciplinary Steering Committee, WPSI examines the evidence to develop new (and update existing) recommendations for women's preventive services. WPSI's Dissemination and Implementation Steering Committee then takes the HRSA-approved recommendations and disseminates them through the development of implementation tools and resources for both patients and practitioners.

WPSI bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence, following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, and external reviews. Additionally, HRSA requires that WPSI incorporate processes to assure opportunity for public comment, including participation by patients and consumers, in the development of the updated Guidelines.

The existing Guidelines relating to diabetes state:

''**Screening for Gestational Diabetes Mellitus**

WPSI recommends screening pregnant women for GDM after 24 weeks of gestation (preferably between 24 and 28 weeks of gestation) in order to prevent adverse birth outcomes. Screening with a 50-g oral glucose challenge test (followed by a 3-hour 100-g oral glucose tolerance test if results on the initial oral glucose challenge test are abnormal) is preferred because of its high sensitivity and specificity.

WPSI suggests that women with risk factors for diabetes mellitus be screened for preexisting diabetes before 24 weeks of gestation—ideally at the first prenatal visit, based on current clinical best practices.''

''**Screening for Diabetes Mellitus After Pregnancy**

WPSI recommends women with a history of GDM who are not currently pregnant and who have not previously been diagnosed with type 2 diabetes mellitus should be screened for diabetes mellitus. Initial testing should ideally occur within the first year postpartum and can be conducted as early as 4–6 weeks postpartum (see Table 1).

Women with a negative initial postpartum screening test result should be rescreened at least every 3 years for a minimum of 10 years after pregnancy. For women with a positive postpartum screening test result, testing to confirm the diagnosis of diabetes is indicated regardless of the initial test (*e.g.,* oral glucose tolerance test, fasting plasma glucose, or hemoglobin A1c). Repeat testing is indicated in women who were screened with hemoglobin A1c in the first 6 months postpartum regardless of the result.''

Draft Updated Clinical Recommendations for Public Comment

Screening for Diabetes in Pregnancy

WPSI proposes to update the Screening for GDM Guideline to revise the title to read ''Screening for Diabetes in Pregnancy'' and to revise the clinical recommendation to read: ''The Women's Preventive Services Initiative recommends screening pregnant women for GDM after 24 weeks of gestation (preferably between 24 and 28 weeks of gestation) to prevent adverse birth outcomes. WPSI recommends screening pregnant women with risk factors for type 2 diabetes or GDM before 24 weeks of gestation—ideally at the first prenatal visit.''

Screening for Type 2 Diabetes After Pregnancy

WPSI also proposes to update the Screening for Diabetes Mellitus after Pregnancy Guideline to revise the title to read ''Screening for Type 2 Diabetes after Pregnancy'' and to revise the

clinical recommendation to read: ''The WPSI recommends screening for type 2 diabetes in women with a history of GDM who are not currently pregnant and who have not previously been diagnosed with type 2 diabetes. Initial testing should ideally occur within the first year postpartum and can be conducted as early as 4–6 weeks postpartum. Women who were not screened in the first year postpartum or women with a negative initial postpartum screening test result should be screened at least every 3 years for a minimum of 10 years after pregnancy. For those with a positive screening test result in the early postpartum period (*i.e.,* 4–6 weeks postpartum), testing should be repeated at least 6 months postpartum to confirm the diagnosis of diabetes regardless of the type of initial test (*e.g.,* fasting plasma glucose, hemoglobin A1c, oral glucose tolerance test). Repeat testing is also indicated for women screened with hemoglobin A1c in the first 6 months postpartum regardless of whether the test results are positive or negative because the hemoglobin A1c test is less accurate during the first 6 months postpartum.''

Discussion of Updated Clinical Recommendations

Screening for Diabetes in Pregnancy

WPSI recommended three updates to the Guideline on Screening for GDM. The first change is a revision to the title of the Guideline from ''Screening for GDM'' to ''Screening for Diabetes in Pregnancy.'' This change to the title was made for consistency with the clinical recommendation, which includes screening for gestational diabetes and screening for preexisting diabetes, as the previous title described a more limited scope in screening. The second update recommended by WPSI is to change language in the second sentence of the recommendation from ''diabetes mellitus'' to ''type 2 diabetes or GDM.'' This change reflects that ''diabetes mellitus'' is commonly described as type 2 diabetes. Third, WPSI modified the recommendation by relocating the information on specific types of screening to the Implementation Considerations section of the Guideline. The existing Guideline recommends the 2-step approach, because of its high sensitivity and specificity. In its recommended update, WPSI continues to recommend the 2-step approach, but has relocated it to the Implementation Considerations section, and also added the 1-step approach to the list of screening modalities in the Implementation Considerations section, because both approaches are acceptable screening tests based on studies described in the updated 2021 United States Preventive Services Task Force evidence review. Both the 1-step and 2-step screening modalities are within the scope of this Guideline.

Screening for Type 2 Diabetes After Pregnancy

WPSI also recommended five updates to the Guideline on Screening for Diabetes Mellitus After Pregnancy. First, WPSI recommended updating the title of the Guideline by changing it from ''Screening for Diabetes Mellitus After Pregnancy'' to ''Screening for Type 2 Diabetes After Pregnancy.'' This change was made because ''diabetes mellitus'' is now more commonly described as type 2 diabetes. Second, WPSI recommended removing the reference to Table 1 based upon feedback from the clinical community, noting that the table might be confusing and could be simplified in written format, and recommended including this information in narrative form. Third, WPSI recommends screening for ''women who are not screened in the first year postpartum'' and ''women with a positive screening test result in early postpartum.'' This recommendation was added to ensure screening for women who were not screened postpartum for various reasons (*e.g.,* scheduling, lack of transportation, availability of testing, etc.), and to reflect that universal screening for women with a history of GDM is more appropriate than risk-based screening because the risk of developing type 2 diabetes is high among all such individuals. Fourth, WPSI also recommended adding new language to recommend repeat testing after 6 months postpartum to confirm a positive test result from the early postpartum period (4–6 weeks postpartum). Fifth, WPSI also recommended adding new language to the Guideline explaining that hemoglobin A1c tests conducted within the first 6 months postpartum should be repeated because the test is less accurate when conducted during the first 6 months postpartum. Screening for type 2 diabetes after pregnancy as described in this Guideline, including follow-up diabetes screening testing, is within the scope of this Guideline.

Members of the public can view each complete updated draft recommendation by accessing the initiative's web page at *https://www.womenspreventivehealth.org/.*

Carole Johnson,

Administrator.

[FR Doc. 2022–23860 Filed 11–2–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders Meeting and Solicitation for Written Comment

AGENCY: Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders.

ACTION: Notice of meeting and solicitation for written comment.

SUMMARY: As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders will hold a virtual, two-day meeting on December 5 and December 6, 2022.

DATES: The Commission will meet on December 5, 2022, and December 6, 2022, from 4:00 p.m. Eastern Time (ET) to approximately 7:00 p.m. ET on both days. The confirmed time and agenda will be posted on the website for the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders: *https://www.hhs.gov/about/whiaanhpi/commission/index.html* when this information becomes available.

Written comments, in response to the questions listed below, will be accepted via email at *AANHPICommission@hhs.gov* with the subject line ''PACAANHPI: Response to <insert the issue and question>.'' To be assured consideration in the development of future recommendations, written comments must be submitted and received at the email address provided above, no later than 11:59 p.m. ET on Thursday, December 1, 2022. Submissions received after the deadline will not be reviewed.

ADDRESSES: The meeting will be live streamed. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-449829250397.*

FOR FURTHER INFORMATION CONTACT: Caroline Goon, Designated Federal

Officer, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, U.S. Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, Hubert H. Humphrey Building, Room 515F, 200 Independence Ave. SW, Washington, DC 20201; email: *AANHPICommission@hhs.gov;* telephone: (202) 619–0403, fax: (202) 619–3818.

SUPPLEMENTARY INFORMATION: The meeting is the fourth in a series of Federal advisory committee meetings regarding the development of recommendations to promote equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. The meeting is open to the public and will be live streamed. The Commission, co-chaired by HHS Secretary Xavier Becerra and the U.S. Trade Representative Ambassador Katherine Tai, will advise the President on: the development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States, including efforts to close gaps in health, socioeconomic, employment, and educational outcomes; policies to address and end anti-Asian bias, xenophobia, racism, and nativism, and opportunities for the executive branch to advance inclusion, belonging, and public awareness of the diversity and accomplishments of AA and NHPI people, cultures, and histories; policies, programs, and initiatives to prevent, report, respond to, and track anti-Asian hate crimes and hate incidents; ways in which the Federal Government can build on the capacity and contributions of AA and NHPI communities through equitable Federal funding, grantmaking, and employment opportunities; policies and practices to improve research and equitable data disaggregation regarding AA and NHPI communities; policies and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services; and strategies to increase public-and private-sector collaboration, and community involvement in improving the safety and socioeconomic, health, educational, occupational, and environmental well-being of AA and NHPI communities.

Information is available on the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders website at *https://www.hhs.gov/about/whiaanhpi/commission/index.html.* The names of the 25 members of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders are available at *https://www.hhs.gov/about/whiaanhpi/commission/commissioners/index.html.*

Purpose of Meeting: The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, authorized by Executive Order 14031, will meet to discuss full and draft recommendations by the Commission's six Subcommittees on ways to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander communities. The Subcommittees are: Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination; Data Disaggregation; Language Access; Economic Equity; Health Equity; and Immigration and Citizenship Status.

Background: Asian American, Native Hawaiian, and Pacific Islander communities are among the fastest growing racial and ethnic populations in the United States according to the U.S. Census Bureau. However, in recent years, AA and NHPI individuals have faced increasing hate crimes and incidents that threaten their safety, as well as harmful stereotypes that often ignore socioeconomic, health, and educational disparities impacting these diverse communities.

Tragic acts of anti-Asian violence increased during the COVID–19 pandemic, casting a shadow of fear and grief over many AA and NHPI communities, in particular East Asian communities. Long before this pandemic, AA and NHPI communities in the United States, including South Asian and Southeast Asian communities, have faced persistent xenophobia, religious discrimination, racism, and violence. At the same time, AA and NHPI communities are overrepresented in the pandemic's essential workforce in healthcare, food supply, education, and childcare, with more than four million AA and NHPIs manning the frontlines throughout the pandemic.

Many AA and NHPI communities, and in particular Native Hawaiian and Pacific Islander communities, have also been disproportionately burdened by the COVID–19 public health crisis. Evidence suggests that Native Hawaiians and Pacific Islanders are three times more likely to contract COVID–19 compared to white people and nearly twice as likely to die from the disease. On top of these health inequities, many AA and NHPI workers, families, and small businesses have faced devastating economic losses during this crisis, which must be addressed.

The challenges AA and NHPI communities face are often exacerbated by a lack of adequate data disaggregation and language access. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders works to advise the President on executive branch efforts to address these challenges and advance equity, justice, and opportunity for AA and NHPI communities.

Public Participation at Meeting: Members of the public are invited to view the Commission meeting. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-449829250397.* Please note that there will be no opportunity for oral public comments during the meeting of the Commission. However, written comments are welcomed throughout the development of the Commission's recommendations to promote equity, justice, and opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders and may be emailed to *AANHPICommission@hhs.gov* at any time. Respond concisely and in plain language. You may use any structure or layout that presents your information well. You may respond to some or all of our questions, and you can suggest other factors or relevant questions. You may also include links to online material or interactive presentations. Clearly mark any proprietary information and place it in its own section or file. Your response will become Government property, and we may publish some of its non-proprietary content.

The Commission is particularly interested in soliciting written comments on the following questions:

1. *Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination Subcommittee Questions:*

a. Please describe policies, programs, models, or best practices that have been effective in reducing race-based violence or bias targeting AA and NHPI communities, including any programs geared toward children or youth.

b. What policies, programs, models, or best practices, if any, have reduced incidents of gun violence in AA and NHPI communities?

c. What barriers have AA and NHPI military servicemembers faced in seeking religious accommodations from their respective branch of the U.S. military?

2. *Data Disaggregation Subcommittee Questions:*

a. What datasets do AA and NHPI communities identify as being

particularly important for the Federal Government to prioritize for disaggregated data collection, analysis, and reporting?

b. How can existing Federal Government datasets be improved in terms of questions, survey structures, categories, collection methodology, data accessibility, and more in order to better serve community-based organizations and ensure that AA and NHPI population data is useful for further analysis?

c. What are some ideas on how the Federal Government can better partner with community-based organizations, think tanks, and academic institutions for secondary data analysis?

3. *Language Access Subcommittee Questions:*

a. Title VI of the Civil Rights Act of 1964 requires recipients of Federal financial assistance to provide meaningful access to their programs to people who are limited English proficient (LEP). How can the Federal Government ensure that recipients of Federal financial assistance conduct effective outreach to LEP communities, provide language access and support AAPI LEP communities, including those that speak languages of lesser diffusion? Examples, models, or promising practices are welcomed.

b. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, requires the Federal Government to provide LEP individuals with meaningful access to federally-conducted programs and activities. Each Federal agency was also asked under Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, to identify potential barriers that underserved communities and individuals may face to enrollment in and access to benefits and services in Federal programs. Given the Federal Government's commitment to language access and racial equity, how can the Federal Government better conduct outreach to and address the needs of AA and NHPI LEP communities, including those that speak languages of lesser diffusion? Examples, models, or promising practices are welcomed.

c. How can the Federal Government promote the preservation, teaching, learning of, maintenance and utilization of AA and NHPI languages?

4. *Immigration and Citizenship Status Subcommittee Questions:*

a. What information should the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) prioritize for translation, and what Asian and Pacific Islander languages should be prioritized?

b. What are some ways for the U.S. Department of Homeland Security's U.S. Immigration and Customs Enforcement (ICE) to improve cultural sensitivity, equity, and language access in their interactions with the AAPI community?

c. How should the Federal Government improve access to humanitarian protections, such as asylum and victim protections for AAPI community members?

d. The citizens of the Freely Associated States of Palau, the Marshall Islands and the Federated States of Micronesia may live, study, and work in the United States and its territories without a visa. This arrangement is pursuant to compact treaties signed with these countries and in recognition of the special relationship they have with the United States. They are lawful residents and do not have immigrant status nor are they eligible to apply for permanent resident status. They are currently eligible for some Federal programs but not others. For example, they are eligible for the Women Infant and Children's Program (WIC), but not SNAP (Food Stamps). Please provide examples of the ways in which this lack of access to Federal benefits and programs has impacted citizens from the Freely Associated States?

e. Please provide input and recommendations on ways to reduce the burden on individuals and families subject to long-term orders of supervision following final orders of removal. Many Asian Americans and Pacific Islanders have final orders of removal and continue to live in the United States on orders of supervision. For example, some individuals have been required to check-in with U.S. Immigration and Customs Enforcement (ICE), sometimes yearly or more frequently, for over 20 years. Each ICE field office has the authority to decide the frequency of check-ins for an individual on an order of supervision, resulting in often burdensome and traumatic, non-uniform check-in schedules.

i. How do the current validity periods for Employment Authorization Documents (EAD) affect individuals with a long-term order of supervision? How would extending the validity period for EADs issued to this population impact their livelihood?

ii. What positive equities should ICE consider in determining removals and in the exercise of prosecutorial discretion?

Authority: Executive Order 14031. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (Commission) is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of Federal advisory committees.

Krystal Ka'ai,

Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.

[FR Doc. 2022–23876 Filed 11–2–22; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Exploratory Studies to Investigate Mechanisms of HIV Infection, Replication, Latency, and/or Pathogenesis in the Context of Substance Use Disorders.

Date: December 16, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Li Rebekah Feng, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–7245, *rebekah.feng@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23893 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the Board of Scientific Counselors.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 2, 2022.

Closed: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 10 Center Drive, Room 10D39, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chris J. McBain, Ph.D., Acting Scientific Director, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, 10 Center Drive, Room 10D39, Bethesda, MD 20892, (301) 594–5984, *mcbainc@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/advisory/bsc,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: October 28, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23898 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Learning, Memory and Decision Neuroscience.

Date: December 1, 2022.

Time: 2:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Myongsoo Matthew Oh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011F, Bethesda, MD 20892, (301) 435–1042, *ohmm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Prevention and Immunotherapy.

Date: December 1, 2022.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockville Drive, Room 6200, MSC 7804, Bethesda, MD 20892, (301) 443–1196, *laura.asnaghi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Social and Community Influences Across the Life Course.

Date: December 1, 2022.

Time: 12:30 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aubrey Spriggs Madkour, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000C, Bethesda, MD 20892, (301) 594–6891, *madkouras@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23880 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, which was published in the **Federal Register** on October 11, 2022, FR Doc 2022–22015, 87 FR 61341.

This notice is being amended to change the date and time of this meeting from November 1–2, 2022, 9:00 a.m.–6:00 p.m. to November 28, 2022, 9:00 a.m.–6:00 p.m. and November 29, 2022, 9:00 a.m.–12:00 p.m. The meeting is closed to the public.

Dated: October 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23900 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Development of HIV Broadly Neutralizing Antibody Susceptibility Assays (R61/R33 Clinical Trial Not Allowed).

Date: December 2, 2022.

Time: 10:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Vishakha Sharma, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G34, Rockville, MD 20852, 301–761–7036, *vishakha.sharma@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23902 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Immune Drivers of Autoimmune Disease (IDAD) (U01 Clinical Trial Not Allowed).

Date: December 1–2, 2022.

Time: 9:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Poonam Tewary, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G56, Rockville, MD 20852, (301) 761–7219, *tewaryp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23896 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ACTS, Special Topic.

Date: November 22, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800K, Bethesda, MD 20817, (301) 867–5309, *robert.gersch@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23875 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neurobiology of Pain and Itch.

Date: November 18, 2022.

Time: 4:00 p.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anne-Sophie Marie Lucie Wattiez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4642, *anne-sophie.wattiez@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 28, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23878 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Centers for AIDS Research (P30 Clinical Trial Not Allowed); Developmental Centers for AIDS Research (P30 Clinical Trial Not Allowed).

Date: December 5–6, 2022.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Cynthia L. De La Fuente, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Rockville, MD 20852, 240–669–2740, *delafuentecl@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 28, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–23897 Filed 11–2–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Notification of Intent To Use Schedule III, IV, or V Controlled Medications for the Treatment of Opioid Use Disorder Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234 and OMB No. 0930–0369)—Revision

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit qualifying practitioners to seek and obtain waivers to prescribe certain approved controlled medications for the treatment of opioid use disorder. The legislation set eligibility and certification requirements as well as an interagency notification review process for practitioners who seek waivers. To implement these provisions, SAMHSA developed Notification of Intent Forms that facilitate the submission and review of notifications. The forms provide the information necessary to determine whether practitioners meet the qualifications for waivers set forth under the law at the 30-, 100-, and 275-patient limits. This includes the annual reporting requirements for practitioners with waivers for a 275-patient limit. On October 24, 2018, the Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act (Pub. L. 115–71) was signed into law. Sections 3201–3202 of the SUPPORT Act made several amendments to the Controlled Substances Act regarding office-based opioid use disorder treatment that affords practitioners greater flexibility in the provision of Medications for Opioid Use Disorder (MOUD).

The SUPPORT Act expands the definition of ''qualifying other practitioner'' enabling Clinical Nurse Specialists, Certified Registered Nurse Anesthetists, and Certified Nurse Midwives (CNSs, CRNAs, and CNMs) to apply for a Drug Addiction Treatment Act of 2000 (DATA) waiver until October 1, 2023. It also allows qualified practitioners (*i.e.,* MDs, DOs, NPs, PAs, CNSs, CRNAs, and CNMs) who are board certified in addiction medicine or addiction psychiatry, -or- practitioners who provide MOUD in a qualified practice setting, to start treating up to 100 patients in the first year of practice (as defined in 42 CFR 8.2) with a waiver. Further, the SUPPORT Act extends the ability to treat up to 275 patients to ''qualifying other practitioners'' (*i.e.,* NPs, PAs, CNSs, CRNAs, and CNMs) if they have a waiver to treat up 100 patients for at least one year and provide treatment of Opioid Use Disorder with covered medications (as such terms are defined under 42 CFR 8.2) in a qualified practice setting as described under 42 CFR 8.615. Finally, the SUPPORT Act also expands how physicians could qualify for a waiver. Under the statute now, physicians can qualify for a waiver if they have received at least 8 hours of training on treating and managing patients with opioid use disorder, as listed in the statute if the physician graduated in good standing from an accredited school of allopathic medicine or osteopathic medicine in the United States during the 5-year period immediately preceding the date on which the physician submits a Notice of Intent to SAMHSA. In order to expedite the new provisions of the SUPPORT Act, SAMHSA sought and received a Public Health Emergency Paperwork Reduction Act Waiver.

On April 28, 2021 the Department of Health and Human Services (HHS) issued the new Practice Guidelines for the Administration of Buprenorphine for Treating Opioid Use Disorder (86 FR 22439) in an expedited manner. The Practice Guidelines allow practitioners who wish to obtain a 30-patient waiver to forego the 8-hour training requirement for physicians and 24-hour training for other qualifying practitioners. Practitioners utilizing this training exemption are limited to treating no more than 30-patients at a time and time spent practicing under this exemption will not qualify the practitioner to qualify for a higher patient level. In addition, the new Practice Guidelines removed the requirement to provide counseling and other ancillary services (*i.e.,* psychosocial services).

The collection of information within the application is essential to the implementation of SAMHSA's mission to reduce the impact of substance use disorders on America's communities. Practitioners may use these forms for various types of notifications: (a) New

Notification to treat up to 30 patients; (b) New Notification, with the intent to immediately facilitate treatment of an individual (one) patient; (c) Second notification of need and intent to treat up to 100 patients; (d) New notification to treat up to 100 patients, and (e) New notification to treat up to 275 patients. Under ''new'' notifications, practitioners make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). The form collects data on the following items: Practitioner name; state medical license number; medical specialty; and DEA registration number; address of primary practice location, telephone and fax numbers; email address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification: new, immediate, or renewal; certification of qualifying criteria for treatment and management of patients with opioid use disorder; certification of capacity to provide directly or refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those medication formulations that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician and Behavioral Health Treatment Services locators. The following table summarizes the estimated annual burden for the use of these forms.

42 CFR citation	Purpose of submission	Estimated number of respondents	Responses/ respondent	Burden/ response (hr.)	Total burden (hrs.)
	Notification of Intent	1,800	1	0.083	149
	Notification to Prescribe Immediately	60	1	0.083	5
	Notice to Treat up to 100 patients	600	1	0.04	24
	Notice to Treat up to 275 patients	960	1	0.081	78
Subtotal		3,420			256
Burden Associated With the Final Rule That Increased the Patient Limit					
8.620 (a)–(c)	Request for Patient Limit Increase *	620	1	0.5	310
	Request for Patient Limit Increase *	620	1	0.5	310
	Request for Patient Limit Increase *	620	1	0.5	310
8.64	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
	Renewal Request for a Patient Limit Increase *	312	1	0.5	156
8.655	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
	Request for a Temporary Patient Increase for an Emergency *.	12	1	3	36
Subtotal		2,497			1,279
Burden Associated With the Final Rule That Outlined the Reporting Requirements					
8.635	Practitioner Reporting Form *	1,620		3	4860
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Nurse Practitioners.	979	1	0.066	65
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Physician Assistants.	708	1	0.066	47
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Certified Nurse Specialists.	708	1	0.066	47
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Certified Nurse Mid-Wives.	708	1	0.066	47
	''Qualifying Other Practitioner'' under 21 USC § 823(g)(2)—Certified Registered Nurse Anesthetists.	708	1	0.066	47
Sub Total		5,431	1		5112
Total Burden		6,561			6,647

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–23953 Filed 11–2–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2282]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before February 1, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2282, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator for Risk Management (Acting), Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Lincoln County, Kansas and Incorporated Areas Project: 21–07–0027S Preliminary Date: July 15, 2022	
City of Barnard	City Office, 313 Main Street, Barnard, KS 67418.
City of Beverly	City Office, 203 North Main Street, Beverly, KS 67423.
City of Lincoln Center	City Hall, 153 West Lincoln Avenue, Lincoln Center, KS 67455.
City of Sylvan Grove	City Hall, 118 South Main Street, Sylvan Grove, KS 67481.
Unincorporated Areas of Lincoln County	Lincoln County Courthouse, 216 East Lincoln Avenue, Lincoln Center, KS 67455.

[FR Doc. 2022–23881 Filed 11–2–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of April 19, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator for Risk Management (Acting), Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Grand Traverse County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2144	
Charter Township of East Bay	East Bay Township Hall, 1965 North Three Mile Road, Traverse City, MI 49696.
Charter Township of Garfield	Garfield Township Hall, 3848 Veterans Drive, Traverse City, MI 49684.
City of Traverse City	City Hall, 400 Boardman Avenue, Traverse City, MI 49684.
Grand Traverse Band of Ottawa and Chippewa Indians	Grand Traverse Band of Ottawa and Chippewa Indians, Tribal Government, 2605 North West Bay Shore Drive, Peshawbestown, MI 49682.
Township of Acme	Acme Township Hall, 6042 Acme Road, Williamsburg, MI 49690.
Township of Blair	Blair Township Hall, 2121 County Road 633, Grawn, MI 49637.
Township of Paradise	Paradise Township Hall, 2300 East M–113, Kingsley, MI 49649.
Township of Peninsula	Peninsula Township Hall, 13235 Center Road, Traverse City, MI 49686.
Township of Whitewater	Whitewater Township Hall, 5777 Vinton Road, Williamsburg, MI 49690.
Prince Edward County, Virginia and Incorporated Areas Docket No.: FEMA–B–2172	
Town of Farmville	Town Hall, 116 North Main Street, Farmville, VA 23901.
Unincorporated Areas of Prince Edward County	Prince Edward County Administrator's Office, 111 North South Street, Farmville, VA 23901.

[FR Doc. 2022–23882 Filed 11–2–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2022–N061; FXES11130300000–223–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before December 5, 2022.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 71680A	Megan Martin, Indianapolis, IN.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and northern long-eared bat (*M. septentrionalis*).	Add: KS, LA, ME, NE, ND, and SD to existing authorized locations: AL, AR, CT, DE, FL, GA, IL, IN, IA, KY, MA, MD, MI, MN, MO, MS, NC, NH, NJ, NY, OK, OH, PA, RI, SC, TN, VA, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect nonintrusive measurements, and release.	Amend and renew.
TE 35518B	Jeremy Sheets, Plymouth, IN.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat *(M. septentrionalis*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect nonintrusive measurements, and release.	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE30313C	Doug Wynn, LLC, Russells Point, OH.	Eastern massasauga rattlesnake (*Sistrurus catenatus*).	IN, MI, OH, PA	Conduct presence/absence surveys, document habitat use, conduct population monitoring, monitor health and disease, and evaluate impacts.	Capture, handle, temporarily hold, collect tissue/blood samples, radio-tag, mark, release, and salvage.	Renew.
TE04397C	Giorgianna Auteri, Columbus, IN.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DC, DE, GA, IL, IN, IA, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect nonintrusive measurements, collect hair samples, collect wing biopsy tissue, light tag, and release.	Renew.
TE26856C	Sean Langley, Indianapolis, IN.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat *(M. septentrionalis*).	AL, AR, CT, DE, FL, GA, IA, IL, IN, KY, KS, OK, MA, MD, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, PA, RI, SC, SD, TN, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect nonintrusive measurements, and release.	Renew.
TE71821A	David Zanatta, Mount Pleasant, MI.	Northern riffleshell (*Epioblasma torulosa rangiana*), clubshell (*Pleurobema clava*), snuffbox (*Epioblasma triquetra*), rayed bean (*Villosa fabalis*), white catspaw (*Epioblasma obliquata perobliqua*), rabbitsfoot (*Quadrula cylindrica*).	OH, MI, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, relocate to enhance survival, and evaluate impacts.	Capture, handle, hold, relocate, and release.	Renew.
TE40128B	Charles Morgan, Murray, KY.	Add: Round hickorynut (*Obovaria subrotunda*) and longsolid (*Fusconaia subrotunda*) to 27 currently authorized freshwater mussel species.	Add KS, OK, NE, and SD to existing authorized locations: LA, AR, FL, GA, IA, IN, IL, KY, LA, MI, MN, MO, MS, OH, PA, TN, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, relocate to enhance survival, and evaluate impacts.	Capture, handle, and release.	Amend and renew.
TE27007C	Christopher Smith, Lakeland, MN.	Rusty patched bumble bee (*Bombus affinis*) and northern long-eared bat (*Myotis septentrionalis*).	MN	Conduct presence/absence surveys, document habitat use, conduct population monitoring, relocate to enhance survival, and evaluate impacts.	Capture, handle, and release.	Renew.
ES40247C	Minnesota Department of Natural Resources, Saint Paul, MN.	Rusty patched bumble bee (*Bombus affinis*).	MN	Conduct presence/absence surveys, document habitat use, conduct population monitoring, relocate to enhance survival, and evaluate impacts.	Add new activity—DNA sampling—to existing authorized activities: Capture, handle, and release.	Amend and renew.
ES64081B	Joseph Hoyt, Blacksburg, VA.	Indiana bat (*Myotis sodalis*) and Northern long-eared bat *(M. septentrionalis*).	IL, MI, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, relocate to enhance survival, and evaluate impacts.	Enter hibernacula and collect biological samples.	Renew.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Services, Bloomington, Minnesota.

[FR Doc. 2022–23969 Filed 11–2–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1586 (Final)]

Sodium Nitrite From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of sodium nitrite from Russia, provided for in subheading 2834.10.10 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission instituted this investigation effective January 13, 2022, following receipt of antidumping and countervailing duty petitions filed with the Commission and Commerce by Chemtrade Chemicals US LLC, Parsippany, New Jersey. The Commission established a general schedule for the conduct of the final phase of its investigations of sodium nitrite from India and Russia following publication of a preliminary determination by Commerce that imports of sodium nitrite were subsidized by the government of Russia. Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 20, 2022 (87 FR 23567). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on June 21, 2022. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not align its countervailing duty investigation on Russia with either of the corresponding antidumping duty investigations; did not postpone the final determination of its antidumping duty investigation on Russia; and aligned its countervailing duty investigation on sodium nitrite from India with its postponed antidumping duty investigation regarding India. On August 15, 2022, the Commission issued a final affirmative determination in its countervailing duty investigation of sodium nitrite from Russia (87 FR 51141, August 19, 2022). Following publication of a final determination by Commerce that imports of sodium nitrite from Russia were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping duty investigation on Russia was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 23, 2022 (87 FR 58136).

The Commission made this determination pursuant to § 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on October 27, 2022. The views of the Commission are contained in USITC Publication 5379 (October 2022), entitled *Sodium Nitrite from Russia: Investigation No. 731–TA–1586 (Final).*

By order of the Commission.

Issued: October 28, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23855 Filed 11–2–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–593]

U.S.-Pacific Islands Trade and Investment: Impediments and Opportunities

ACTION: Notice of investigation and scheduling of a public hearing.

SUMMARY: Following receipt on September 29, 2022, of a request from the United States Trade Representative (USTR), under section 332(g) of the Tariff Act of 1930, the U.S. International Trade Commission (Commission) instituted Investigation No. 332–593, *U.S.- Pacific Islands Trade and Investment: Impediments and Opportunities.* The USTR requested that the Commission conduct an investigation and provide a report that analyzes Pacific Island trade with the United States and identifies impediments to and opportunities for increased trade flows between the United States and the Pacific Islands, and for increased U.S. investment in the Pacific Islands.

DATES:

January 31, 2023: Deadline for filing requests to appear at the public hearing.

February 2, 2023: Deadline for filing prehearing briefs and statements.

February 7, 2023: Deadline for filing electronic copies of oral hearing statements.

February 14, 2023: Public hearing.

February 21, 2023: Deadline for filing post-hearing briefs and statements.

April 17, 2023: Deadline for filing all other written submissions.

September 29, 2023: Transmittal of Commission report to the USTR.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Project Leader Steven LeGrand (*steven.legrand@usitc.gov* or 202–205–

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 55781 (September 12, 2022).

3094) or Deputy Project Leader Robert Ireland (*robert.ireland@usitc.gov* or 202–708–4101) for information specific to this investigation. For information on the legal aspects of this investigation, contact Brian Allen (*brian.allen@usitc.gov* or 202–205–3034) or William Gearhart of the Commission's Office of the General Counsel (*william.gearhart@usitc.gov or* 202–205–3091). The media should contact Jennifer Andberg, Office of External Relations (*jennifer.andberg@usitc.gov* or 202–205–1819). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*).

Background: As requested by the USTR under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission will include the following in its report:

- An overview of the Pacific Island economies, including major sectors in production, consumption, trade, and employment.
- A description of goods and services exports from the Pacific Islands during the period 2017–21, and identification of major factors that impact those exports to the United States.
- A description of the use of the U.S. General System of Preferences (GSP) program by the Pacific Island countries and identification of the goods from the Pacific Islands that enter the United States under GSP, sectors in which these programs might be underutilized, and factors affecting utilization of GSP.
- A description of foreign investment in the Pacific Islands during the period 2017–21; and identification of major factors affecting investment from the United States.
- Identification of major products (including goods covered by the GSP program) and services in the Pacific Islands with greatest potential for export sales to the United States, sectors with U.S. investment potential, and the factors that impede trade and investment with the United States for these products and sectors using qualitative analysis and, to the extent data are available, quantitative analysis.
- A description of initiatives and/or technical assistance that could address such trade and investment impediments, if found during the Commission's research.

The 22 Pacific Island economies covered in this investigation are Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu (independent countries); Federated States of Micronesia, Palau, and Marshall Islands (Freely Associated States); Guam, Commonwealth of the Northern Mariana Islands, and American Samoa (U.S. territories); and Cook Islands, French Polynesia, New Caledonia, Niue, Pitcairn Islands, Tokelau, and Wallis and Futuna (non-independent countries and territories).

The USTR requested that the Commission transmit its report no later than 12 months following receipt of this request. In its request letter, the USTR stated that it intends to make the Commission's report available to the public in its entirety and asked that the report not include any confidential business information or classified information.

Public Hearing: A public hearing in connection with this investigation will be held in-person beginning at 9:30 a.m. on Tuesday, February 14, 2023, in the Main Hearing Room of the U.S. International Trade Commission, 500 E Street SW, Washington DC 20436. The hearing can also be accessed remotely using the WebEx videoconference platform. A link to the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., Tuesday, January 31, 2023, in accordance with the requirements in the ''Written Submissions'' section below. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear as a witness via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigation, may at their discretion for good cause shown, grant such requests. Requests to appear as a witness via videoconference due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing.

All prehearing briefs and statements should be filed not later than 5:15 p.m., Thursday, February 2, 2023. To facilitate the hearing, including the preparation of an accurate written transcript of the hearing, oral testimony to be presented at the hearing must be submitted to the Commission electronically no later than noon, February 7, 2023. All post-hearing briefs and statements should be filed no later than 5:15 p.m., Tuesday, February 21, 2023. Post-hearing briefs and statements should address matters raised at the hearing. For a description of the different types of written briefs and statements, see the ''Definitions'' section below.

In the event that, as of the close of business on January 31, 2023, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should check the Commission website as indicated two paragraphs above for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary and should be received not later than the date specified in this notice. All written submissions must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8), as temporarily amended by 85 FR 15798 (March 19, 2020). Under that rule waiver, the Office of the Secretary will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802), or consult the Commission's Handbook on Filing Procedures.

Definitions of Types of Documents That May Be Filed; Requirements: In addition to requests to appear at the hearing, this notice provides for the possible filing of four types of documents: prehearing briefs, oral hearing statements, post-hearing briefs, and other written submissions.

(1) *Prehearing briefs* refers to written materials relevant to the investigation and submitted in advance of the hearing, and includes written views on matters that are the subject of the investigation, supporting materials, and any other written materials that you consider will help the Commission in understanding your views. You should file a prehearing brief particularly if you plan to testify at the hearing on behalf of an industry group, company, or other organization, and wish to provide detailed views or information that will support or supplement your testimony.

(2) *Oral hearing statements (testimony)* refers to the actual oral statement that you intend to present at the public hearing. *Do not* include any confidential business information in that statement. If you plan to testify, you must file a copy of your oral statement by the date specified in this notice. This statement will allow Commissioners to understand your position in advance of the hearing and will also assist the court reporter in preparing an accurate transcript of the hearing (*e.g.,* names spelled correctly).

(3) *Post-hearing briefs* refers to submissions filed after the hearing by persons who appeared at the hearing. Such briefs: (a) should be limited to matters that arose during the hearing, (b) should respond to any Commissioner and staff questions addressed to you at the hearing, (c) should clarify, amplify, or correct any statements you made at the hearing, and (d) may, at your option, address or rebut statements made by other participants in the hearing.

(4) *Other written submissions* refers to any other written submissions that interested persons wish to make, regardless of whether they appeared at the hearing, and may include new information or updates of information previously provided.

There is no standard format that a brief or other written submission must follow. However, each such document must identify on its cover (1) the type of document filed (*i.e.,* prehearing brief, oral statement of (name), post-hearing brief, or written submission), (2) the name of the person or organization filing it, and (3) whether it contains confidential business information (CBI). If it contains CBI, it must comply with the marking and other requirements set out below in this notice relating to CBI. Submitters of written documents (other than oral hearing statements) are encouraged to include a short summary of their position or interest at the beginning of the document, and a table of contents when the document addresses multiple issues.

Confidential Business Information: Any submissions that contain confidential business information must also conform to the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information is clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

As requested by the USTR, the Commission will not include any confidential business information in its report. However, all information, including confidential business information, submitted in this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel for cybersecurity purposes. The Commission will not otherwise disclose any confidential business information in a way that would reveal the operations of the firm supplying the information.

Summaries of Written Submissions: Persons wishing to have a summary of their position included in the report that the Commission sends to the USTR should include a summary with their written submission and should mark the summary as having been provided for that purpose. The summary should be clearly marked as ''summary for inclusion in the report'' at the top of the page. The summary may not exceed 500 words, should be in MS Word format or a format that can be easily converted to MS Word, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. The Commission will list the name of the organization furnishing the summary and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found.

By order of the Commission.

Issued: October 28, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–23856 Filed 11–2–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 04–22]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Wednesday, November 16, 2022, at 10:00 a.m. EST.

PLACE: This meeting will be held by teleconference. There will be no physical meeting place.

STATUS: Open. Members of the public who wish to observe the meeting via teleconference should contact Patricia M. Hall, Foreign Claims Settlement Commission, Tele: (202) 616–6975, two business days in advance of the meeting. Individuals will be given call-in information upon notice of attendance to the Commission.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions in claims against Albania.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, advance notices of intention to observe an open meeting, and requests for teleconference dial-in information may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Jeremy R. LaFrancois,

Chief Administrative Counsel.

[FR Doc. 2022–23986 Filed 11–1–22; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0013]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Currently Approved Collection; Request by Organization for Accreditation or Renewal of Accreditation of Non-Attorney Representative (Form EOIR–31A)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review (EOIR), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on August 15, 2022, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 5, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Request by Organization for Accreditation or Renewal Accreditation of Non-Attorney Representative.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: EOIR–31A.

Sponsor: Office of Legal Access Programs, Executive Office for Immigration Review, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Non-profit organizations seeking accreditation or renewal of accreditation of its representatives by the Office of Legal Access Programs of the Executive Office for Immigration Review.

Abstract: This information collection will allow an organization to seek accreditation or renewal of accreditation of a non-attorney representative to appear before EOIR and/or the Department of Homeland Security. This information collection is necessary to determine whether a representative meets the eligibility requirements for accreditation. Requests can be made using a fillable pdf. application or electronic submission.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 550 respondents will complete the form annually for initial accreditation requests, with an average of 3 hours per response, for a total of 1,650 hours. It is estimated that 369 respondents will complete the form annually for renewal requests, with an average of 7 hours per response, for a total of 2,583 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,233 total annual burden hours associated with this collection.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Suite 3E.206, Washington, DC 20530.

Dated: October 28, 2022.

Robert Houser,

Department Clearance Officer Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–23886 Filed 11–2–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0001]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Revision of a Currently Approved Collection; Application for Cancellation of Removal (42A) for Certain Permanent Residents; and Application for Cancellation of Removal and Adjustment of Status (42B) for Certain Nonpermanent Residents

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Executive Office for Immigration Review, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Aug. 25, 2022, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 5, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• Enhance the quality, utility, and clarity of the information to be collected; and/or
• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.
2. *The Title of the Form/Collection:* Application for Cancellation of Removal for Certain Permanent Residents; and Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers: EOIR–42A and EOIR–42B;

Sponsor: Executive Office for Immigration Review, United States Department of Justice.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals in removal proceedings before EOIR determined to be removable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individuals in removal proceedings who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 31,788 respondents will complete the form annually with an average of 5 hours and 50 minutes per response.
6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 185,430 hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Office of the Chief Information Officer, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, Suite 3E.206, Washington, DC 20530.

Dated: October 28, 2022.

Robert Houser,

Department Clearance Officer Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–23887 Filed 11–2–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On October 27, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of Iowa in the lawsuit entitled *United States* v. *Quad County Corn Processors Cooperative* Civil Action No. 5:22–cv–04057–CJW–MAR.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the regulations that govern the renewable fuel program at the defendant's corn processing facility in Galva, Iowa. The consent decree requires the defendant to perform injunctive relief and pay a civil penalty of $320,000 plus interest in installments over two years.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Quad County Corn Processors Cooperative,* D.J. Ref. No. 90–5–2–1–12296. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $7.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–23912 Filed 11–2–22; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Antarctic Conservation Act Application Permit Form

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by January 3, 2023 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Antarctic Conservation Act Application Permit Form.

OMB Number: 3145–0034.

Expiration Date of Approval: December 31, 2022.

Type of Request: Intent to seek approval to renew an information collection.

Proposed Project: The current Antarctic Conservation Act Application

Permit Form (NSF 1078) has been in use for several years. The form requests general information, such as name, affiliation, location, etc., and more specific information as to the type of object to be taken (plant, native mammal, or native bird).

Use of the Information: The purpose of the regulations (45 CFR 670) is to conserve and protect the native mammals, birds, plants, and invertebrates of Antarctica and the ecosystem upon which they depend and to implement the Antarctic Conservation Act of 1978, Public Law 95–541, as amended by the Antarctic Science, Tourism, and Conservation Act of 1996, Public Law 104–227.

Burden on the Public: The Foundation estimates about 25 responses annually at 45 minutes per response; this computes to approximately 19 hours annually.

Dated: October 28, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–23867 Filed 11–2–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; National Science Foundation (NSF) Polar Media Program Application Form for the Arctic and the U.S. Antarctic Program (USAP)

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title of Collection: National Science Foundation (NSF) Polar Media Program Application Form for the Arctic and the U.S. Antarctic Program (USAP).

OMB Control No.: 3145–New.

Abstract: The purpose of the National Science Foundation (NSF) Polar Media Program is to raise awareness of the United States' scientific and operational activities in the Arctic region and in Antarctica and the Southern Ocean. Members of the media can apply and be selected for the program whose reporting targets these activities and covers multiple media channels that will reach large and targeted audiences. This program supports the *President's Memorandum Regarding Antarctica,* Memorandum 6646, that ''The United States Antarctic Program shall be maintained at a level providing an active and influential presence in Antarctica designed to support the range of U.S. Antarctic interests.''

The NSF Polar Media Program Application Form will collect information from media groups interested in participating in the program in response to an official yearly media call (example of a previous media call: *https://www.nsf.gov/news/news_summ.jsp?cntn_id=295843*). Information collected will include media contact information (first and last name, occupation, organization and organization website URL and reach, social media channel information, passport number, country, date of issuance, email address, mailing address, and phone number) in addition to organization travel desires, proposal information and specific criteria related to the proposal. Information collected will be the basis of selection for participating in the program.

Respondents: Individuals.

Estimated Number of Annual Respondents: 20.

Burden on the Public: Estimated 45 minutes to fill out the form, including the collection of data to fill in the fields. This information should be readily available for most interested parties. The estimated burden time is 15 hours.

Dated: October 31, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–23974 Filed 11–2–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–313; NRC–2022–0186]

Entergy Operations, Inc.; Arkansas Nuclear One; Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–51, issued to Entergy Operations, Inc., for operation of Arkansas Nuclear One, Unit 1 (ANO–1). The proposed amendment would revise the dose equivalent Iodine (I)–131 and the reactor coolant system (RCS) primary activity limits required by ANO–1 Technical Specification (TS) 3.4.12, ''RCS Specific Activity,'' and the

primary-to-secondary leak rate limit provided in TS 3.4.13, ''RCS Operational LEAKAGE.'' For this amendment request, the NRC proposes to determine that it involves no significant hazards consideration. Because this amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

DATES: Submit comments by December 5, 2022. A request for a hearing or petitions for leave to intervene must be filed by January 3, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by November 14, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0186. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Thomas J. Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–4037, email: *Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0186 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0186.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0186 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background Information

On February 22, 2022, the NRC staff published a proposed no significant hazards consideration (NSHC) determination in the **Federal Register** (87 FR 9651) for the proposed amendment. Subsequently, by letters dated June 2, 2022 (ADAMS Accession No. ML22153A464) and October 13, 2022 (ADAMS Accession No. ML22286A249), the licensee provided additional information that clarified the scope of the amendment request as originally noticed in the **Federal Register**. Accordingly, this second proposed NSHC determination supersedes the original notice in its entirety.

III. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. DPR–51, issued to Entergy Operations, Inc., for operation of the ANO–1, located in Pope County, Arkansas.

By letter dated September 30, 2021 (ADAMS Accession No. ML21274A874), as supplemented by letters dated December 2, 2021 (ADAMS Accession No. ML21337A245), June 2, 2022, and October 13, 2022, Entergy Operations, Inc. (the licensee) requested a license amendment for ANO–1. The proposed amendment would revise the dose equivalent I–131 and the RCS primary activity limits required by ANO–1 TS 3.4.12, ''RCS Specific Activity.'' In addition, the primary-to-secondary leak rate limit provided in TS 3.4.13, ''RCS Operational LEAKAGE,'' would be revised. The licensee stated that these proposed changes are due to non-conservative inputs used in the steam generator tube rupture accident, the main steam line break accident, and the control rod ejection accident dose calculations.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment re-analyzes EAB [exclusion area boundary], LPZ [low population zone], and CR [control room] doses for three design basis accidents to address non-conservative inputs previously used. There are no plant modifications or operating procedure changes that would increase the probability of an accident previously evaluated. While the revised doses generally increase, they remain below the allowable regulatory limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment changes accident analysis inputs for calculating dose consequences at the EAB, LPZ, and CR. There are no plant modifications or operating procedure changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment re-analyzes EAB, LPZ, and CR doses for three design basis accidents to address non-conservative inputs used previously. While the revised doses generally increase, they are below the allowable regulatory limits. The margin of safety for the radiological consequences of these accidents is provided by meeting the applicable regulatory limits. An acceptable margin of safety is inherent in these limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission make a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other

adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as Social Security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated September 30, 2021, as supplemented on December 2, 2021, June 2, 2022, and October 13, 2022.

Attorney for licensee: Ms. Anna Vinson Jones Senior Counsel Entergy Services, LLC 101 Constitution Avenue NW, Suite 200 East L–ENT–WDC Washington, DC 20001.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2),

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

I. If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3] The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated: October 28, 2022.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Acting Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2022–23829 Filed 11–2–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–30 and CP2023–29]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 7, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–30 and CP2023–29; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 77 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 28, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 7, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–23957 Filed 11–2–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 27, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 75 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–28, CP2023–27.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23861 Filed 11–2–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 77 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–30, CP2023–29.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23864 Filed 11–2–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 25, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 223 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–26, CP2023–25.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23865 Filed 11–2–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 3, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on October 27, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 76 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–29, CP2023–28.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–23862 Filed 11–2–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–646, OMB Control No. 3235–0695]

Proposed Collection; Comment Request; Extension: Rule 17Ad–22

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17Ad–22 (17 CFR 240.17Ad–22) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of covered clearing agencies, and improve efficiency, transparency, and access to covered clearing agencies.[1] Rule 17Ad–22, which consists of paragraphs (a)(1) through (e)(23), requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address a number of topics, including governance, operations, and risk management. In particular, Rule 17Ad–22(e) includes requirements for covered clearing agencies, defined as registered clearing agencies that provide the services of a central counterparty or central securities depository; Rule 17Ad–22(d) includes requirements for all registered clearing agencies that are not covered clearing agencies; and Rules 17Ad–22(b) and (c) include certain other requirements for clearing agencies that perform central counterparty services. The total estimated annual time burden of Rule 17Ad–22 is 8,532 hours, and the total estimated annual cost burden is $14,041,280.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission staff's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by January 3, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: October 28, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–23874 Filed 11–2–22; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 17 CFR 240.17Ad–22; *see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66225–26 (Nov. 2, 2012).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96177; File No. SR–ISE–2022–23]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Standard Monthly Expirations for NQX

October 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit ISE to list up to 12 standard monthly expirations for options based on 1/5 the value of the Nasdaq-100 Index® (''NQX'').

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its index listing rules at Options 4A, Section 12(a)(3) to allow it to list up to 12 standard monthly expirations for options based on 1/5 the value of the Nasdaq-100 Index (''NQX'').

Currently, Options 4A, Section 12(a)(3) provides that the Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.[4] Today, the maximum number of monthly expirations permitted by Options 4A, Section 12(a)(3) for NQX options is six (6) standard monthly expirations.

At this time, like Nasdaq-100 Index options (''NDX''), the Exchange proposes to permit up to 12 standard (monthly) expirations in NQX options. This would permit the Exchange to list the same number of monthly expirations (up to 12) for NQX options as currently permitted for options on the corresponding full-value index, Nasdaq-100 Index.

Today, NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of NDX options, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Like NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on 1/5 of the value of the Nasdaq-100 Index, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).[5]

Market participants may use NQX options as a hedging vehicle to meet their investment needs in connection with the Nasdaq-100 Index. Since both products are used to hedge exposure to the Nasdaq-100 Index, the Exchange believes it is appropriate to permit the Exchange to be able to list the same number of monthly expirations for NQX options as it does today for NDX options.

The Exchange notes that Cboe Exchange, Inc.'s (''Cboe'') rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index (''Mini-RUT'' or ''MRUT'') and Mini S&P 500 Index (''Mini-SPX'' or ''XSP'').[6] Mini-SPX is p.m.-settled and subject to a pilot program similar to NQX.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Allowing ISE to list up to 12 standard monthly expirations for NQX options will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors, because it will allow the Exchange to be able to list the same number of expirations for options on a reduced-value index (NQX) as it currently lists for NDX options, which are options on the corresponding full-value index. The Exchange notes that because the same components comprise NQX as the Nasdaq-100 Index, market participants may use NQX options as a hedging vehicle to meet their investment needs in connection with the corresponding full-value index-related product. Therefore, by allowing the Exchange to be able to list a consistent number of expirations between options on the full-value and reduced-value index, the proposed rule change will benefit investors by assisting them in more effectively using options that track the same index to meet their investment needs.

[4] Options 4A, Section 12(a)(3) states, ''Expiration Months and Weeks. Index options contracts may expire at three (3)-month intervals or in consecutive weeks or months. The Exchange may list: (i) up to six (6) standard monthly expirations at any one time in a class, but will not list index options that expire more than twelve (12) months out; (ii) up to 12 standard monthly expirations at any one time for any class that the Exchange (as the Reporting Authority) uses to calculate a volatility index; and (iii) up to 12 standard (monthly) expirations in NDX options.''

[5] The Exchange notes that NDX options are both a.m.-settled and p.m.-settled while NQX options are only p.m.-settled.

[6] *See* Cboe Rule 4.13(a)(2).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

The Exchange notes that today, Cboe rules permit it to list up to 12 standard monthly expirations for Mini-Russell 2000 Index (''Mini-RUT'' or ''MRUT'') and Mini S&P 500 Index (''Mini-SPX'' or ''XSP'').[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change will impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act as all monthly expirations listed for NQX options will be equally available, or continue to be equally available, to all market participants who trade such options. Also, the proposed number of expirations will apply, or continue to apply, in the same manner to all NQX options. The proposed rule change makes it possible for the same expirations to be listed for options on the reduced-value index (NQX) that are currently available for NDX options, which are options on the full-value index, Nasdaq-100 Index.

The Exchange does not believe that the proposed rule change regarding the number of standard monthly expirations permissible for NQX options will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because NQX is a proprietary Exchange product. To the extent that allowing up to 12 standard monthly expirations for NQX options trading on the Exchange may make the Exchange a more attractive marketplace to market participants at other exchanges, such market participants are free to elect to become market participants on ISE. As noted above, the Exchange believes that being able to list a consistent number of monthly expirations of options on both the full-value and reduced-value index may permit investors to more effectively use options that track the same index to meet their investment needs.

This proposal enhances intermarket competition because it permits ISE's proprietary product, NQX, the same flexibility to trade, and hedge, with 12 standard monthly expirations as certain Cboe proprietary products.

[9] *See* Cboe Rule 4.13(a)(2).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will protect investors because it will allow the Exchange to be able to list expirations for NQX options that are consistent with the expirations for related NDX options, and assist market participants in more effectively utilizing both the full-value index and reduced-value option as hedging vehicles to meet their investment needs in connection with the Nasdaq-100 Index product as soon as feasible. Further, the Exchange states that there is investor demand to be able to transact in the same number of expirations for NQX options as the Exchange currently lists for NDX options (that is, 12 standard monthly expirations). For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2022–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2022–23 and should be submitted on or before November 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23871 Filed 11–2–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96176; File No. SR–NASDAQ–2022–057]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Listing Rule 5732 To Provide Listing Standards for Contingent Value Rights on Nasdaq Global Market

October 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 17, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Listing Rule 5732 to provide listing standards for Contingent Value Rights on Nasdaq Global Market.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to adopt Listing Rule 5732 to provide listing standards for Price-Based and Event-Based Contingent Value Rights (each a ''CVR'' and collectively, ''CVRs'') on Nasdaq Global Market, which are unsecured obligations of the issuer providing for a possible cash payment at maturity.[3] The Exchange believes that the proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges. CVRs are often used to bridge valuation gaps relating to uncertain future events that may influence the value of a target company and, more generally, may be employed to aid in the completion of deals by helping to solve certain of the valuation and closing challenges that the parties encounter.

Specifically, the cash payment at maturity for a CVR can be based upon the price performance of an affiliate's equity security (a ''Price-Based CVR'') or upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer (an ''Event-Based CVR''). At maturity, the holder of a Price-Based CVR is entitled to a cash payment if the average market price of the related equity security is less than a pre-set target price. The target price is established at the time the Price-Based CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the Price-Based CVR would expire worthless. Price-Based CVRs are generally distributed to shareholders of an acquired company who are receiving shares of the acquirer as acquisition consideration. The Price-Based CVRs provide the acquiree's shareholders with some medium-term protection against poor stock price performance of the shares of the acquirer by guaranteeing them a specified cash payment if the acquirer's average stock price is below a specified level at the time of maturity of the Price-Based CVR.

Event-Based CVRs are also typically issued to the shareholders of an acquired entity as consideration in an acquisition transaction. Event-Based CVRs entitle their holders to receive a specified cash payment upon the occurrence of a specified event or events related to the business of the issuer or an affiliate of the issuer prior to the maturity date of the Event-Based CVR. The Event-Based CVR provides the shareholders of the acquiree an additional interest in the medium-term performance of the merged entity upon occurrence of its specified event(s). An example of a typical Event-Based CVR occurs in mergers of life sciences companies, when the CVR payment is triggered by the receipt of FDA approval of a new drug application. Another example of an Event-Based CVR is a CVR issued in connection with a merger whose payment triggering event is the achievement of a specified level of financial performance by the combined entity or by a division of the combined entity representing the assets from the acquired company. Event-Based CVRs, which are transferrable, have become increasingly common in recent years, especially in connection with mergers of life sciences companies.

For initial listing on the Nasdaq Global Market, the issuer must have assets in excess of $100 million, satisfy the requirement of Nasdaq Rule 5315(f)(3)(A)[4] or have at least $200 million in global market capitalization and satisfy the requirement of Rule

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is based on Section 703.18 of the NYSE Listed Company Manual, related to initial listing of CVRs, and the provisions of Section 802.01D applicable to ''Specialized Securities'', related to continued listing of CVRs. *See* Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR–NYSE–90–15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR–NYSE–2019–14) (adopting NYSE rules related to Event-Based CVRs).

[4] Specifically, to satisfy Nasdaq Rule 5315(f)(3)(A) a Company, other than a closed end management investment company, must aggregate income from continuing operations before income taxes of at least $11 million over the prior three fiscal years, (ii) positive income from continuing operations before income taxes in each of the prior three fiscal years, and (iii) at least $2.2 million income from continuing operations before income taxes in each of the two most recent fiscal years.

5315(f)(2)(A) and (B)[5] related to Market Value of Unrestricted Publicly Held Shares. In order to list a CVR, an issuer of the CVR must not be considered non-compliant with the listing standards of the national securities exchange where either the equity security to whose price performance a Price-Based CVR, or in an Event-Based CVR, where the primary equity security is linked or the issuer's common stock is listed.

Also, the CVR issue must have a minimum of 400 holders; a minimum of 1 million CVRs outstanding; a minimum of $4 million market value; a minimum life of one year; and a minimum $4.00 bid price. While these distribution and liquidity standards applicable to CVRs can help to ensure there should be adequate depth, liquidity, and investor interest to support an exchange listing, the issuer requirements will provide some minimum level of indicia that the issuer of a CVR should be able to meet any future payment obligations to shareholders of Event-Based, as well as Price-Based, CVRs pursuant to the applicable CVR agreement.

Prior to listing a CVR under the proposed rule, Nasdaq would issue a circular as described in proposed Nasdaq Rule 5732(c) reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. Nasdaq will suggest to its members that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or whom the member firm has otherwise ascertained that CVRs are suitable for. Like other financial products with unique features trading on the Exchange, CVRs combine features of debt, equity, and securities derivative instruments. Consequently, this product may be more complex than straight stock, bond, or equity warrants. The Exchange believes distribution of this information circular will help to alert members to the special disclosure and suitability obligations that apply to CVRs and that are relevant in making recommendations for investors to purchase such securities.[6]

While listed, the issuer of an Event-Based CVR will be required to make public disclosure: (i) upon the occurrence of any event that must occur as a condition to the issuer's obligation to make a cash payment with respect to the CVR (or if such an event is deemed to have occurred pursuant to the terms of the documents governing the CVR); or (ii) at any such time as it becomes clear that a condition to the cash payment with respect to the CVR has not been met as required by the documents governing the terms of the CVR.[7]

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following: (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least $1 million Market Value of Listed Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred.

The Exchange will rely on its existing trading surveillances, administered by the Exchange, or the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange will monitor activity in CVRs to identify and deter any potential improper trading activity in such securities and monitor CVRs alongside the common equity securities of the issuer or its affiliates, as applicable. In addition, the Exchange will adopt enhanced surveillance procedures if necessary. Since news and information concerning a company and its primary equity security or common stock can have an impact on a company's Event-Based CVRs and Price-Based CVRs, the surveillance should help to monitor the trading activity in the Event-Based CVRs and Price-Based CVRs. In addition, if the underlying security is listed and traded on another U.S. national securities exchange, Nasdaq will communicate as needed and may obtain information regarding trading from markets and other entities that are members of ISG.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to permit the listing of CVRs under proposed Listing Rule 5732 is designed to protect investors and the public interest. The purpose of the proposed rule change is to provide a transparent regulated market for the trading of those securities. The listing of Price-Based CVRs has been permitted under Section 703.18 of the New York Stock Exchange LLC (''NYSE'') Listed Company Manual (''Section 703.18'') for many years, and several years ago NYSE also amended Section 703.18 to accommodate Event-Based CVRs.[11] The Exchange notes that, with the exception of the payment triggering event, Event-Based CVRs are identical in structure to Price-Based CVRs. Listed companies have been issuing transferable Event-Based CVRs as acquisition consideration for a number of years.[12]

[5] *See* Nasdaq Rule 5315(f)(2)(A) and (B) requiring (i) a Market Value of at least $110 million; or (ii) a Market Value of at least $100 million, if the Company has stockholders' equity of at least $110 million.

[6] In particular, the circular states, among other things, that it is suggested that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading and that members making recommendations in CVRs should make a determination that the customer has such knowledge and experience in financial matters that the customer may reasonably be expected to be capable of evaluating the risks and special characteristics, and is financially able to bear the risks, of a recommendation to invest in CVRs. Nasdaq believes these requirements, among others set forth in the circular, should help to ensure that members recommend transactions only to those customers with an understanding of the risks attendant to the trading of CVRs.

[7] IM–5250–1. Disclosure of Material Information, among other things, requires Nasdaq companies to notify Nasdaq's MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made from 7:00 a.m. to 8:00 p.m. ET. Trading halts are instituted, among other reasons, to ensure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions.

[8] For a list of the current members of ISG, *see www.isgportal.org.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Securities Exchange Act Release No. 26072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (SR–NYSE–90–15) (adopting NYSE rules related to Price-Based CVRs); Securities Exchange Act Release No. 86651 (August 13, 2019), 84 FR 42967 (August 19, 2019) (SR–NYSE–2019–14) (adopting NYSE rules related to Event-Based CVRs).

[12] *See,* for example, CVRs listed by Sanofi (cash payment tied to achieving sales targets of certain drugs) and Wright Medical Group N.V. (cash

The Exchange will distribute a circular as described in proposed Listing Rule 5732(c) prior to the commencement of trading of any CVR reminding its members that because CVRs have certain unique characteristics investors should be afforded an explanation of such special characteristics and risks attendant to trading thereof, as well as the Exchange's know-your-customer, suitability, and other rules applicable thereto. The Exchange believes that the distribution of this circular will help address concerns, among others, that the complexity of a CVR could lead to investor confusion and create certain risks. In addition, the Exchange will monitor activity in CVRs, to identify and deter any potential improper trading activity in such securities and monitor CVRs together with the common equity securities of the issuer or its affiliates, as applicable. The Exchange also will adopt enhanced surveillance procedures if necessary. The Exchange believes these measures will reduce the risks of manipulative or other improper activity in connection with CVRs.

Proposed Listing Rule 5732 is designed to protect investors and the public interest, as it requires that only larger, well capitalized companies can list CVRs. The issuer requirements under proposed Listing Rule 5732 are those applied to the initial listing of common stocks of operating companies on the Nasdaq Global Select Market, and, as such, the Exchange believes that they are sufficiently rigorous to be used in connection with the listing of CVRs on Nasdaq Global Market. The Exchange further believes that issuers that meet the Global Select Market issuer qualification requirements are likely to be substantial companies capable of meeting their financial obligations under the terms of a listed CVR. The Exchange also notes that it will require issuers of listed CVRs to have at least $100 million in total assets at the time of original listing.

Nasdaq will delist a CVR pursuant to the provisions of the Listing Rule 5800 Series if the CVR fails to maintain any of the following, which are set forth in the continued listing requirements of Listing Rule 5732(d): (1) at least 100,000 Publicly Held Shares; (2) at least 100 Holders; or (3) at least $1 million Market Value of Listed Securities. In addition, Nasdaq would delist the CVR if either the equity security to whose price performance a Price-Based CVR is linked or the issuer's common stock does not remain listed. Also, Nasdaq would delist an Event-Based CVR once the occurrence of the specified event or events related to the business of the issuer or an affiliate of the issuer has occurred or once it goes beyond the time that the specified event or events should have occurred. This is designed to protect investors and the public interest, as it ensures that issuers whose CVRs are listed on the Exchange will meet the qualitative and quantitative standards for listing on a national securities exchange on a continuous basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will increase competition by providing an additional listing venue for CVRs, which can currently be listed on other securities exchanges and does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–057, and should be submitted on or before November 25,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23870 Filed 11–2–22; 8:45 am]

BILLING CODE 8011–01–P

payment tied to FDA approval of a certain drug and achieving revenue milestones), which were both listed on the Exchange under current Rule 5730. No similar CVRs are currently listed at the time of this filing.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96171; File No. SR–MIAX–2022–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 519C, Mass Cancellation of Trading Interest

October 28, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 19, 2022, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 519C, Mass Cancellation of Trading Interest.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretations and Policies .01 of Exchange Rule 519C, Mass Cancellation of Trading Interest, to provide Members [3] the option of having the Exchange cancel all orders, including GTC Orders,[4] if the Exchange detects a loss of communication on a FIX Order Interface (''FOI'') Session.

Background

Electronic Exchange Members (''EEMs'') [5] connect to the Exchange via the Financial Information eXchange (''FIX'') Protocol.[6] An EEM connects to their assigned FIX port using the MIAX FIX Order Interface (''FOI'') which is a flexible interface that uses the FIX protocol for both application and session level messages. The Exchange relies on heartbeat [7] messages to determine the status of the connection to ensure bi-directional communication remains intact. Upon missing a single heartbeat, FOI will send a *Test Request* message [8] to the Member to check the status of the connection. Upon missing a certain number of heartbeats,[9] FOI will send a logout message and terminate the connection. The Exchange currently offers Members certain order handling risk protection options in this scenario.

Specifically, when a Loss of Communication is detected on a FOI connection the System will logoff the Member's session and (i) cancel all eligible orders for the FIX Session if instructed by the Member upon login, or (ii) cancel all eligible orders identified by the Member. Following a disconnection, a reconnection will not be permitted for a certain period of time (''yy'' seconds). The Exchange shall determine the appropriate period of (''yy'' seconds) and shall notify Members of the value of ''yy'' seconds via Regulatory Circular. In no event shall ''yy'' be less than one (1) second or greater than ten (10) seconds.[10]

At the time the Exchange adopted this functionality the Exchange created an exception for Good 'Til Cancel Orders in Interpretations and Policies .01, which stated, Good 'Til Cancelled (''GTC'') orders, as defined in Rule 516 and PRIME Orders, as defined in Rule 515A, are not eligible for automatic cancellation under paragraph (c) of Rule 519C.[11]

Proposal

The Exchange now proposes to amend Interpretations and Policies .01 to allow GTC orders to also be eligible for cancellation when the Exchange detects a Loss of Communication.

As proposed, if the Exchange determines that there is a Loss of Communication, the Exchange will cancel the orders as described above, additionally, if elected, the Exchange proposes to cancel all GTC orders submitted through that FIX Session. As proposed, Members would need to contact the Exchange's Help Desk,[12] in a form and manner to be determined by the Exchange and communicated via Regulatory Circular, to have this optional order protection (cancellation of GTC orders) configured.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(5) of the Act [14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[4] A Good 'til Cancelled or ''GTC'' Order is an order to buy or sell which remains in effect until it is either executed, cancelled or the underlying option expires. *See* Exchange Rule 516(l).

[5] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is not a Market Maker. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] The Financial Information eXchange (FIX) is a vendor-neutral electronic communications protocol for the international real-time exchange of securities transaction information. Scott, Gordon, Financial Information eXchange (FIX), Investopedia (June 20, 2022), *https://www.investopedia.com/terms/f/financial-information-exchange.asp.*

[7] A ''Heartbeat'' message is a communication which acts as a virtual pulse between the Exchange System and the Member's system. The heartbeat message sent by the Member and received by the Exchange allows the Exchange to continually monitor its connection with the Member. *See* Interpretations and Policies .02(i) of Exchange Rule 519C.

[8] The test request message is a FIX Protocol message that forces a heartbeat from the opposing application. The test request message checks sequence numbers or verifies communication line status. The opposite application responds to the Test Request with a Heartbeat containing the Test Request ID. Financial Information Exchange Protocol (FIX), Version 4.2 with errata. May 1, 2001.

[9] The Exchange notes that the current System setting is two (2) heartbeats, and that any change to this setting will be determined by the Exchange and communicated to Members via Regulatory Circular.

[10] *See* Exchange Rule 519C(c)(2).

[11] *See* Securities Exchange Act Release No. 80151 (March 3, 2017), 82 FR 13146 (March 9, 2017) (SR–MIAX–2017–08).

[12] The term ''Help Desk'' means the Exchange's control room consisting of Exchange staff authorized to make certain trading determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive officer of the Exchange. *See* Exchange Rule 100.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The disconnect feature of FIX connections is mandatory, however Members have the option to enable the cancellation of all orders for an entire session or select orders for cancellation on an order-by-order basis, which would result in the cancellation of orders submitted over a FIX Session when such session disconnects. The Exchange believes it is appropriate to offer an additional option for Members to have the Exchange cancel GTC orders from the order book when there is a communication issue between the Member and the Exchange, as a communication issue may or may not be quickly resolved.

Offering to cancel all orders (including GTC orders) allows the Member to customize Exchange risk protection functionality to align to a Member's business needs. Offering this type of order cancellation functionality to Members is consistent with the Act because it enables Members to have greater control over the execution of their orders in the event there is a communication issue with the Exchange. The proposed order cancellation functionality is designed to mitigate the risk of a missed execution associated with a loss of communication with the Exchange. The proposed rule change is not unfairly discriminatory among market participants, as it is available equally to all market participants utilizing a FOI connection to the Exchange.

The Exchange believes that the proposed rule change will assist with the maintenance of a fair and orderly market by providing Members with greater control over their resting orders. The Exchange's proposal is consistent with the Act because it will mitigate the risk of potential erroneous or unintended executions associated with a loss of communication which protects investors and the public interest. Additionally, the proposed rule adds another level of risk protection for Members and protects investors and the public interest by increasing the risk protection options available to Members of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposed rule change to provide an additional risk protection imposes any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that adding an optional risk protection benefits all Members on the Exchange that use a FOI connection as any Member with a FOI connection can elect to use the risk protection described in the proposed rule.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) [16] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–37.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–37, and should be submitted on or before November 25, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–23869 Filed 11–2–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34743]

Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 28, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on November 22, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

BMO Exchange Traded Funds [File No. 811–23313]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 19, 2022.

Applicant's Address: Gisele.sutherland@bmo.com.

Infusive US Trust [File No. 811–23426]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 21, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $35,000 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Date: The application was filed on July 12, 2022.

Applicant's Address: brett@infusive.com.

Master Large Cap Series LLC [File No. 811–09739]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 25, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $4,000 incurred in connection with the liquidation were paid by the applicant's investment adviser or its affiliates.

Filing Date: The application was filed on September 30, 2022.

Applicant's Address: jkean@sidley.com.

NexPoint Latin American Opportunities Fund [File No. 811–23153]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The application was filed on September 29, 2022.

Applicant's Address: cal.gilmartin@klgates.com.

Salient Midstream & MLP Fund [File No. 811–22626]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Salient MLP & Energy Infrastructure Fund, a series of Salient MF Trust and on September 13, 2022 made a final distribution to its shareholders based on net asset value. Expenses of $315,000 incurred in connection with the reorganization were paid by the applicant and the acquiring fund.

Filing Date: The application was filed on September 29, 2022.

Applicant's Address: cal.gilmartin@klgates.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–23884 Filed 11–2–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17667 and #17668; Florida Disaster Number FL–00180]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA–4673–DR), dated 10/03/2022.

Incident: Hurricane Ian.

Incident Period: 09/23/2022 and continuing.

DATES: Issued on 10/27/2022.

Physical Loan Application Deadline Date: 12/02/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 07/03/2023.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 10/03/2022, is hereby amended to

[17] 17 CFR 200.30–3(a)(12).

include the following areas as adversely affected by the disaster.

Primary Counties: Duval, Pinellas.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–23910 Filed 11–2–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17649 and #17650; Puerto Rico Disaster Number PR–00043]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the Commonwealth of Puerto Rico

AGENCY: Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Puerto Rico (FEMA–4671–DR), dated 09/29/2022.

Incident: Hurricane Fiona.

Incident Period: 09/17/2022 through 09/21/2022.

DATES: Issued on 10/27/2022.

Physical Loan Application Deadline Date: 11/28/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 09/29/2022, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Aguadilla, Carolina.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2022–23913 Filed 11–2–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11899]

60-Day Notice of Proposed Information Collection: Application To Determine Returning Resident Status

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to announce the Department's plan to seek OMB approval of this collection for an additional three-year period, and to initiate a 60-day period for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to January 3, 2023.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0042'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PRA_BurdenComments@state.gov*.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Tonya Whigham who may be reached at *PRA_BurdenComments@state.gov* or at 202–485–7586.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* CA/VO.
- *Form Number:* DS–117.
- *Respondents:* Lawful permanent residents or conditional residents who have remained outside the United States for longer than one year, or beyond the validity period of a Re-entry Permit.
- *Estimated Number of Respondents:* 4,400.
- *Estimated Number of Responses:* 4,400.
- *Average Time per Response:* 30 Minutes.
- *Total Estimated Burden Time:* 2,200 Hours.
- *Frequency:* Once.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Under Section 101(a)(27)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 and INA section 203(b)(4), noncitizens may be issued a special immigrant visa as a returning resident if they are an immigrant, previously lawfully admitted for permanent residence, who is returning from a temporary visit abroad for more than one year due to circumstances outside of his or her control. The DS–0117 is used to collect information necessary to determine a returning resident's eligibility.

Methodology

Individuals will submit the DS–117 electronically via email or print the

form and submit to a U.S. embassy or consulate abroad for review.

Julie M. Stufft,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2022–23929 Filed 11–2–22; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36496]

Application of the National Railroad Passenger Corporation Under 49 U.S.C. 24308(e)—CSX Transportation, Inc., and Norfolk Southern Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of evidentiary hearing and voting conference.

SUMMARY: The evidentiary hearing phase of this proceeding, involving the National Railroad Passenger Corporation (Amtrak), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), and the Alabama State Port Authority and its rail carrier division, the Terminal Railway Alabama State Docks (collectively, the ''Port''; and with Amtrak, CSXT, and NSR, the ''Parties''), will continue on November 17 and 18, 2022. On December 7, 2022, the Board will hold a voting conference, at which Board members will discuss among themselves, and may vote on, the outcome of the case. The evidentiary hearing and voting conference will both take place in the hearing room of the Board's headquarters. The hearing and voting conference will also be available for public viewing on YouTube.

DATES: The evidentiary hearing will continue on November 17 and 18, 2022, beginning each day at 9:30 a.m. Eastern Standard Time (EST). The Parties are directed to file with the Board lists of witnesses and to provide updated lists of their representatives' and witnesses' email addresses by November 10, 2022. The voting conference will take place on December 7, 2022, beginning at 2:00 p.m. EST.

ADDRESSES: The Parties' lists of witnesses should be filed via e-filing on the Board's website, *www.stb.gov.* The Parties' updated lists of their representatives' and witnesses' email addresses should be sent via email to *Hearings@stb.gov.* The evidentiary hearing and voting conference will both take place in the hearing room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On April 4, 2022, the Board commenced the evidentiary hearing phase of this proceeding, which continued on April 5, 6, 8, 12, 14, 18, and 19, and on May 9, 11, and 12, involving the Parties. As of May 12, 2022, the Parties had concluded the presentation of their evidence. However, the Board invited the Parties to submit additional evidence with respect to issues outlined by the Board at the hearing on May 12, 2022. As a result, on July 27, 2022, the Parties each filed supplemental materials, and on August 31, 2022, the Parties each filed a reply to the evidence in the supplemental materials.

The hearing will continue on November 17 and 18, 2022, and will be limited to direct examination and cross-examination on the new evidence presented in the supplemental materials filed following the conclusion of the hearing on May 12, 2022, and to presenting closing arguments. Specifically, the scope of direct examination and cross-examination will be limited to questions related to the modeling submitted with the supplemental evidence and replies showing the results of various operational changes and infrastructure improvements, as well as the potential impacts to customers. Because the Board is familiar with the Parties' filings, the Parties are encouraged to keep any direct examination to a minimum. At no point should the Parties' direct examination or cross-examination involve evidence that was submitted prior to the conclusion of the hearing on May 12, 2022. The Board expects the evidentiary part of this hearing to be completed within five hours.

Subsequent to the completion of the evidentiary presentation, the Board will permit the Parties to make closing arguments. Closing arguments will be limited, as follows: (1) CSXT and NSR will be allowed 60 minutes, collectively; (2) the Port will be allowed 15 minutes; and (3) Amtrak will be allowed 60 minutes. CSXT, NSR, and the Port may reserve a portion of their time for rebuttal.

On December 7, 2022, beginning at 2:00 p.m. EST, the Board will hold a voting conference, at which Board members will discuss among themselves, and may vote on, the outcome of the case. Although the voting conference will be open for public observation, no participation by the Parties or the public will be permitted.

The Parties are directed to confer among themselves and to file with the Board by November 10, 2022 lists of the witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, and (2) whom they request an opportunity to cross-examine. The Parties should include with their witness lists the time they anticipate needing on direct examination with each witness, keeping in mind the goal of completing the evidentiary hearing within five hours.

To facilitate Zoom access, also by November 10, 2022, the Parties are directed to provide the Board, via email at *Hearings@stb.gov,* updated lists of their representatives and witnesses who will participate at the evidentiary hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s).

The hearing and voting conference will be held in the hearing room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001. The hearing on November 17 and 18 will begin each day at 9:30 a.m. EST. Hearing participants who are unable to attend in person—with the exception of witnesses subject to direct or cross-examination—may attend the hearing via Zoom. The hearing and voting conference will be available for public viewing on YouTube.

Instructions for Attendance at Hearing and Voting Conference

No later than November 16, 2022, the Parties' representatives and witnesses will receive an email from the Board via *Hearings@stb.gov* titled ''Participant'' that includes a link and instructions for how to enter the Zoom meeting.[1] Only registered participants will be allowed into the Zoom meeting. As noted above, witnesses subject to direct or cross-examination may not participate virtually in the hearing.

All persons attending the hearing or voting conference in person must use the main entrance to the Board's headquarters, located at 395 E Street SW There will be no reserved seating. The building will be open to the public at 8:00 a.m. There is public parking in the building. The two closest Metro stops are Federal Center SW (3rd and D Streets SW, serving the Blue, Orange, and Silver Lines) and L'Enfant Plaza

[1] The links will allow the Parties' representatives and witnesses to access the evidentiary hearing on November 17 and 18, 2022, and the voting conference on December 7, 2022.

(6th and D Streets SW, serving the Yellow, Green, Blue, Orange, and Silver Lines). Upon arrival, check in at the security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or federal government identification); sign in at the security desk; submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons who exit the building during the hearing will be subject to these security procedures again if they choose to re-enter the building.

Laptops and recorders may be used in the hearing room, and Wi-Fi will be available.[2] Cell phones may be used quietly in the corridor outside the hearing room or in the building's main lobby.

Members of the media should contact Michael Booth in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–1760 if they plan to attend the hearing.

The hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245–0245 by the close of business on November 10, 2022.

The hearing and voting conference will be available for public viewing at *www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live.* A link to the hearing or voting conference can also be accessed through the Board's website at *www.stb.gov,* under ''Quick Links'' on the homepage, by clicking on ''WATCH LIVE HEARINGS HERE.'' If confidential or highly confidential materials are to be presented, all attendees who are not authorized to view the confidential or highly confidential information will be asked to leave the hearing room during the presentation of such information, ''breakout rooms'' will be used if there are hearing participants attending via Zoom, and the YouTube stream of the hearing will be interrupted.

Board Releases and Transcript Availability: Decisions and notices of the Board, including this notice, are available on the Board's website at *www.stb.gov.* A recording of the hearing and the voting conference, as well as a transcript of each, will be posted on the Board's website when they become available.

It Is Ordered

1. The evidentiary hearing will continue in the hearing room of the Board's headquarters, located at 395 E Street SW, Washington, DC 20423–0001, on November 17 and 18, 2022, beginning each day at 9:30 a.m. EST.

2. A voting conference is scheduled on December 7, 2022, in the hearing room of the Board's headquarters, at 2:00 p.m. EST.

3. The Parties are directed to file with the Board, by November 10, 2022, lists of the witnesses (1) whom they intend to call for direct examination at the evidentiary hearing, along with the time they anticipate needing on direct examination with each witness, and (2) whom they request an opportunity to cross-examine.

4. The Parties are directed to provide the Board, by November 10, 2022, via email at *Hearings@stb.gov,* updated lists of their representatives and witnesses who will participate at the evidentiary hearing, those individuals' email addresses, and whether such individuals will need access to the confidential and/or highly confidential breakout room(s).

5. This decision is effective on its service date.

6. This decision will be published in the **Federal Register**.

(Authority: 49 CFR 1113.1)

Decided: October 28, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–23885 Filed 11–2–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension and Modification of an Existing Collection: Urgent Rail Service Issues

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension and modification of an existing and approved information collection, as described below. An emergency approval was granted for this collection (OMB Control Number 2140–0041), expiring on January 31, 2023. The Board is now seeking to extend and modify that collection with a submission through OMB's regular PRA clearance process.

DATES: Comments on these information collections should be submitted by January 3, 2023.

ADDRESSES: Direct all comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Urgent Rail Service Issues.'' For further information regarding this collection, contact Ian Anderson at (202) 245–0337 or *Ian.Anderson@stb.gov.* Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning each collection as to (1) whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and summarized in the Board's request for OMB approval.

Subjects: In this notice, the Board is requesting comments on the following information collection:

Description of Collection

Title: Urgent Rail Service Issues.

OMB Control Number: 2140–0041.

STB Form Number: None.

Type of Review: Revision and extension of currently approved collection.

Respondents: Class I (Large) Railroads.

Number of Respondents: See Table 1 below.

Estimated Time per Response: See Table 1 below.

Frequency: One-time, bi-weekly and monthly, as provided in Table 1 below.

Total Burden Hours (annually including all respondents): 3,024 (sum of estimated hours per response × number of annual responses for each type of filing), as provided in Table 1 below.

[2] The password will be available in the hearing room.

TABLE 1—TOTAL ESTIMATED BURDEN HOURS

Type of filing	Estimated hours per response	Number of respondents	Estimated frequency	Total burden hours
Service Progress Reports	8	4	13	416
Weekly Performance Data	8	7	26	1,456
Monthly Employment Data	16	7	6	672
Interim Update	120	4	1	480
Total Burden Hours				3,024

Total Annual ''Non-hour Burden'' Cost: There are no non-hourly burden costs for this collection. The itemized sub-collections may be filed electronically.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC Termination Act of 1995, the Board is responsible for the economic regulation of common carrier rail transportation. Under 49 U.S.C. 1321(b), 11123, and 11145(a), the Board is empowered to address immediate service issues. Collecting this information will enable the Board to take necessary action to timely deal with the unanticipated and urgent service issues affecting the U.S. rail system. These measures are meant to inform the Board's assessment of further actions that may be warranted to address the acute service issues facing the rail industry and to promote industry-wide transparency, accountability, and improvements in rail service.

At the Board's April 26 and 27, 2022 public hearing in *Urgent Issues in Freight Rail Service,* the Board received extensive testimony on severe rail service issues reported by a wide range of witnesses—including agricultural, energy, and other shippers, as well as government officials, rail labor, and rail experts. The Board has also continued to review and monitor weekly rail service performance data that indicated substantial deterioration in service. This information collection focuses on the adequacy of service recovery efforts involving BNSF Railway Company (BNSF), CSX Transportation (CSXT), Norfolk Southern Railway Company (NS), and Union Pacific Railroad Company UP), and it requires more comprehensive and customer-centric reporting of all Class I (large) railroads' service metrics.

In a decision served on May 6, 2022, the Board found that immediate action was needed to address significant service problems, and it ordered certain railroads to immediately submit relevant information. The Board took this action to better inform its assessment of actions that may be warranted to address rail service issues. In a decision served on June 13, 2022, the Board required UP, BNSF, CSXT, and NS to correct deficiencies in their service recovery plans and provide additional information on their actions to improve service and communications with customers.

Now, in a decision served on October 28, 2022, the Board extended the temporary reporting period for all seven Class I carriers and required certain updated information from UP, BNSF, CSXT, and NS. The Board directed these four carriers to continue to submit biweekly service progress reports for an additional six-month period, until May 5, 2023. The Board also directed all Class I railroads to submit weekly performance data during this period.

Although not all Class I carriers are experiencing service problems to the same degree, the U.S. rail system is an interconnected network and problems in one geographic area can quickly spread elsewhere. The application of certain reporting requirements to all Class I carriers allows the Board to assess the current service issues across the entire rail network. All Class I carriers must also continue to submit monthly employment data in this docket, as described in the May 6 Order. Specific instructions for this information collection and analysis of recent data are provided in the October 28 order.

The information received by the Board from this collection will continue to be filed in Docket No. EP 770 (Sub-No. 1) and will be publicly available at *www.stb.gov.* The information may be found by a search in that docket under the ''proceedings and dockets'' pull-down menu.

The Board makes this submission because, under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: October 31, 2022.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2022–23948 Filed 11–2–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2013–0259]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Advisory Circular: Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 7, 2022. The collection involves Advisory Circular 70–2A which provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations.

DATES: Written comments should be submitted by December 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Barbara Hall by email at: *Barbara.L.Hall@faa.gov;* phone: 940–594–5913.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0698.

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70–2A, Reporting of Laser Illumination of Aircraft.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 7, 2022 (87 FR 54749). Advisory Circular 70–2A provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or email to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 1,100 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 183 hours.

Issued in Washington, DC, on October 31, 2022.

Sandra L. Ray,

Aviation Safety Inspector, Aviation Safety, Safety Standards AFS–200.

[FR Doc. 2022–23968 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0409]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Part 60—Flight Simulation Device Initial and Continuing Qualification and Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 5, 2022. The collection involves requirements necessary to ensure safety-of-flight by ensuring that complete and adequate training, testing, checking, and experience is obtained and maintained by those who operate under certain parts of FAA's regulations and use flight simulation in lieu of aircraft for these functions.

DATES: Written comments should be submitted December 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0680.

Title: Part 60—Flight Simulation Device Initial and Continuing Qualification and Use.

Form Numbers: T001A, T002, T004, T011, T011–FD2, T012, T023, T024, T025, T068, T069.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 5, 2022 (87 FR 19727). Title 49 U.S.C., Section 44702 empowers and requires the Secretary of Transportation to issue operating certificates and to establish minimum safety standards for the operation of air carriers and those to whom such certificates are issued. Also, Title 49 U.S.C., Section 44701 empowers and requires the Administrator of the Federal Aviation Administration (FAA) to prescribe standards applicable to the accomplishment of the mission of the FAA.

Sponsors who wish to maintain certified training centers are mandated to report to this collection. This collection is necessary to ensure that those who must comply with Title 14 CFR part 61, part 63, part 91, part 121, part 135, part 141, and part 142 are able to provide adequate crewmember training and qualification. This collection also helps to ensure safety-of-flight by ensuring those who operate under these parts of the regulation and use flight simulation in lieu of aircraft for these functions, receive and maintain complete and adequate training, testing, checking, and experience. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

Respondents: 66 Flight Simulation Device Operators.

Frequency: Annually.

Estimated Average Burden per Response: Varies per Requirement.

Estimated Total Annual Burden: 88,541.5 Hours.

Issued in Washington, DC, on October 31, 2022.

Sandra L. Ray,

Aviation Safety Inspector, AFS–200.

[FR Doc. 2022–23904 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FRA–2022–0620]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Pilot Certification and Qualification Requirements for Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 10, 2022. The collection involves FAA review of Airline Transport Pilot (ATP) Certification Training Program (CTP) submittals to determine that the program complies with the applicable requirements. It also involves FAA review of an institution of higher education's application for the authority to certify its graduates meet the minimum regulatory requirements.

DATES: Written comments should be submitted by December 5, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

OMB Control Number: 2120–0755.

Title: Pilot Certification and Qualification Requirements for Air Carrier Operations.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 10, 2022 (87 FR 28098). FAA aviation safety inspectors review the Airline Transport Pilot (ATP) Certification Training Program (CTP) submittals to determine that the program complies with the applicable requirements of 14 CFR 61.156. The programs that comply with the minimum requirements receive approval to begin offering the course to applicants for an ATP certificate with a multiengine class rating or an ATP certificate obtained concurrently with an airplane type rating. FAA aviation inspectors also review an institution of higher education's application for the authority to certify its graduates meet the minimum requirements of 14 CFR 61.160. The institutions of higher education that receive a letter of authorization for their degree program(s) are authorized to place a certifying statement on a graduates' transcript indicating he or she is eligible for a restricted privileges ATP certificate.

Respondents: Varies per requirement.

Frequency: Varies per requirement.

Estimated Average Burden per Response: Varies per requirement.

Estimated Total Annual Burden: 1,301 Hours.

Issued in Washington, DC, on October 31, 2022.

Sandra L. Ray,

Aviation Safety Inspector, AFS–200.

[FR Doc. 2022–23907 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2020–0012]

Surface Transportation Project Delivery Program; Utah Department of Transportation Audit Report

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice finalizes the findings of the third audit report for the Utah Department of Transportation (UDOT).

FOR FURTHER INFORMATION CONTACT: Mr. David Cohen, Office of Project Development and Environmental Review, (202) 366–8531, *David.Cohen@dot.gov,* or Mr. Patrick Smith, Office of the Chief Counsel, (202) 366–1345, *Patrick.C.Smith@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 United States Code (U.S.C.). 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities in lieu of the FHWA. The UDOT published its application for NEPA assumption on October 9, 2015, and made it available for public comment for 30 days. After considering public comments, UDOT submitted its application to FHWA on December 1, 2015. The application served as the basis for developing a Memorandum of Understanding (MOU) that identifies the responsibilities and obligations that UDOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on November 16, 2016, with a 30-day comment period to solicit the views of the public and Federal agencies. After the end of the comment period, FHWA and UDOT considered comments and proceeded to execute the MOU. Effective January 17, 2017, UDOT assumed FHWA's

responsibilities under NEPA, and the responsibilities for other Federal environmental laws described in the MOU.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits during each of the first 4 years of State participation. After the fourth year, the Secretary shall monitor the State's compliance with the written agreement. The results of each audit must be made available for public comment. This notice finalizes the findings of the third audit report for UDOT participation in the NEPA Assignment program. The FHWA published a draft version of this report in the **Federal Register** on September 17, 2020, and made it available for public review and comment for 30 days in accordance with 23 U.S.C. 327(g). The FHWA received one response to the **Federal Register** notice during the public comment period for the draft report. The only response, from the American Road and Transportation Builders Association, outlined their general support for the NEPA Assignment program to accelerate Federal-aid highway program and project delivery. The FHWA determined that the comment required no changes to the draft report. This notice finalizes the third NEPA Assignment audit report in Utah.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Stephanie Pollack,

Acting Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

FHWA Audit of the Utah Department of Transportation—Final Report

July 1, 2018–June 30, 2019

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) third audit of the Utah Department of Transportation's (UDOT) National Environmental Policy Act (NEPA) review responsibilities and obligations that FHWA assigned and UDOT assumed pursuant to 23 United States Code (U.S.C.) 327. Throughout this report, FHWA uses the term ''NEPA Assignment Program'' to refer to the program codified at 23 U.S.C. 327. Pursuant to 23 U.S.C. 327, UDOT and FHWA executed a memorandum of understanding (MOU) on January 17, 2017, to memorialize UDOT's NEPA responsibilities and liabilities for Federal-aid highway projects and certain other FHWA approvals in Utah. The section 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA), environmental impact statements (EIS), and non-designated documented categorical exclusions (DCE). A separate MOU, pursuant to 23 U.S.C. 326, authorizes UDOT's environmental review responsibilities for other categorical exclusions (CE), commonly known as CE Program Assignment. The scope of this audit did not include the CE Program Assignment responsibilities and projects.

As part of FHWA's review responsibilities under 23 U.S.C. 327, FHWA formed a team (the ''Audit Team'') in June 2019 to plan and conduct an audit of NEPA responsibilities UDOT assumed. The Audit Team conducted an on-site review during the week of October 7 to October 10, 2019. Prior to the on-site visit, the Audit Team reviewed UDOT's NEPA project files, UDOT's response to FHWA's pre-audit information request (PAIR), UDOT's NEPA Assignment Self-Assessment Report, UDOT's NEPA Quality Assurance/Quality Control (QA/QC) Guidance, and UDOT's NEPA Assignment Training Plan. The Audit Team conducted interviews with four members of UDOT central office staff, three of UDOT's legal counsel (one Assistant Attorney General (AG) assigned to UDOT and two outside counsel), and seven staff members from the U.S. Army Corps of Engineers (USACE) as part of this on-site review.

Overall, the Audit Team found that UDOT continues to carry out the assigned environmental review and transportation decisionmaking responsibilities successfully. The UDOT has made efforts to respond to the FHWA findings from the second audit, including improving document management and QA/QC procedures. In the first and second audits, the FHWA Audit Team observed inconsistent understanding of QA/QC procedures among UDOT staff and lack of adherence to its QA/QC procedures. In the third audit, the Audit Team found that UDOT issued an environmental document without a final legal sufficiency finding, and observed that there were some ways UDOT could improve their training.

The Audit Team identified one non-compliance observation and one observation as well as several successful practices. The Audit Team found UDOT has been carrying out the responsibilities it has assumed in compliance with the provisions of the Section 327 MOU.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects and certain other FHWA actions. Under 23 U.S.C. 327, a State that assumes these Federal responsibilities becomes solely responsible and solely liable for carrying them out. Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA and other Federal environmental laws. Examples of responsibilities UDOT has assumed in addition to NEPA include section 7 consultation under the Endangered Species Act and consultation under section 106 of the National Historic Preservation Act.

After this third audit, FHWA conducted the fourth and last annual audit in November 2020 to satisfy provisions of 23 U.S.C. 327(g) and Part 11 of the MOU. Audits are the primary mechanism through which FHWA may oversee UDOT's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal environmental laws and policies, evaluating UDOT's progress toward achieving the performance measures identified in MOU Section 10.2, and collecting information needed for the Secretary's annual report to Congress. The FHWA must present the results of each audit in a report and make it available for public comment in the **Federal Register**.

The Audit Team consisted of NEPA subject matter experts from the FHWA Utah Division as well as additional FHWA Division staff from California, Georgia, Alaska, and FHWA Headquarters. The subject matter experts received training on how to assess UDOT's compliance and assess the levels of accomplishment associated with the implementation of the NEPA Assignment Program in Utah.

Scope and Methodology

The MOU (Part 3.1.1) states that ''[p]ursuant to 23 U.S.C. 327(a)(2)(A), on the Effective Date, FHWA assigns, and UDOT assumes, subject to the terms and conditions set forth in 23 U.S.C. 327 and this MOU, all of the USDOT Secretary's responsibilities for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* with respect to the highway projects specified under subpart 3.3. This assignment includes statutory provisions, regulations, policies, and guidance related to the implementation of NEPA for highway projects such as 23

U.S.C. 139, 40 CFR parts 1500–1508, DOT Order 5610.1C, and 23 CFR 771 as applicable.'' Also, the performance measure in MOU Part 10.2.1(A) for compliance with NEPA and other Federal environmental statutes and regulations commits UDOT to maintaining documented compliance with requirements of all applicable statutes and regulations, as well as provisions in the MOU.

The Audit Team conducted an examination of UDOT's NEPA project files, UDOT's responses to the PAIR, and UDOT's self-assessment. The audit also included interviews with staff and reviews of UDOT policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements: program management; documentation and records management; QA/QC; legal sufficiency; training; and performance measurement.

The focus of the audit was on UDOT's process and program implementation. Therefore, while the Audit Team reviewed project files to evaluate UDOT's NEPA process and procedures, the Audit Team did not evaluate UDOT's project-specific decisions to determine if they were, in FHWA's opinion, appropriate or not. The Audit Team reviewed 11 NEPA Project files with DCEs, EAs, and EISs, representing all projects with decision points or other actionable items between July 1, 2018, and June 30, 2019. The Audit Team also interviewed environmental staff in UDOT's headquarters office.

The PAIR consisted of 26 questions about specific elements in the MOU. The Audit Team used UDOT's response to the PAIR to develop specific follow-up questions for the on-site interviews with UDOT staff.

The Audit Team conducted four in-person interviews with UDOT environmental staff, one in-person interview with seven staff members of the USACE, two phone interviews with UDOT's outside legal counsel, and one phone interview with legal counsel from the Utah Attorney General's office.

Throughout the document reviews and interviews, the Audit Team verified information on the UDOT NEPA Assignment Program including UDOT policies, guidance, manuals, and reports. This included the NEPA QA/QC Guidance, the NEPA Assignment Training Plan, and the NEPA Assignment Self-Assessment Report.

The Audit Team compared the procedures outlined in UDOT environmental manuals and policies to the information obtained during interviews and project file reviews to determine if there were discrepancies between UDOT's performance and documented procedures. The Audit Team documented observations under the six NEPA Assignment Program topic areas. Below are the audit results.

Overall, UDOT successfully carried out the environmental responsibilities it had assumed through the MOU and the application for the NEPA Assignment Program, and, as such, the Audit Team found UDOT was substantially compliant with the provisions of the MOU.

Observations and Successful Practices

This section summarizes the Audit Team's observations of UDOT's NEPA Assignment Program implementation, including successful practices UDOT may want to continue or expand. Successful practices are positive results FHWA would like to commend UDOT for developing. These may include ideas or concepts that UDOT has planned but not yet implemented. Observations are items the Audit Team would like to draw UDOT's attention to, which may benefit from revisions to improve processes, procedures, or outcomes. The UDOT may have already taken steps to address or improve upon the Audit Team's observations, but at the time of the audit, they appeared to be areas where UDOT could make improvements. This report addresses all six MOU topic areas as separate discussions. Under each area, this report discusses successful practices followed by observations.

This audit report provides an opportunity for UDOT to implement actions to improve their program. The FHWA considered the status of areas identified for potential improvement in this audit's observations as part of the scope of Audit #4. The fourth audit report will include a summary discussion that describes UDOT's progress since this third audit.

Program Management

Successful Practices

During the kickoff meeting, the Audit Team learned that UDOT has placed the Environmental Services Division under Program Development rather than Project Development. This re-organization helped environmental services align their work with planning staff. The UDOT described their interest in advancing a linking planning and environment approach related to their corridor planning process. The UDOT plans to pilot this approach on some corridors studies. Implementing this linking planning and environment approach could help address new environmental requirements and initiatives to accelerate project delivery. The FHWA and UDOT jointly discussed the opportunity and potential benefits that could result from hosting a peer exchange on this subject. In interviews with the USACE, the Audit Team learned that they have had recent discussions with UDOT about this type of approach.

Within the last auditing period, UDOT initiated bi-monthly meetings with USACE to discuss upcoming projects. Early coordination with interested agencies can be effective in early identification and resolution of issues, and help to accelerate project delivery. The USACE supports continuing these early coordination efforts. In addition, USACE noted that UDOT's project managers were diligent and effective in documenting discussions in meetings and sending project-specific meeting notes to them for review and concurrence.

Through interviews with USACE, the Audit Team learned that UDOT had consistently monitored the effectiveness of its wetland mitigation as required for permits issued by USACE under Section 404 of the Clean Water Act, and they sent timely and complete monitoring reports to the USACE.

The UDOT uses varying methods of communication for its public involvement, which UDOT customizes to the context of each project and the surrounding community. Communication methods include, but are not limited to, one-on-one discussions with the public, emails and phone calls UDOT receives from the public through project websites, neighborhood gatherings, and placing door hangers throughout communities. Public involvement plans evolve throughout the NEPA process, and UDOT environmental and public involvement staff meet as a team to decide how to address public concerns as they arise. Through interviews, the Audit Team learned that UDOT is exploring the use of virtual public involvement strategies on some of its projects, such as the use of videos and mapping tools, as a means of further enhancing public engagement.

Documentation and Records Management

Successful Practices

The UDOT continues to improve implementation of its project file system. The UDOT uses ProjectWise as its environmental file system of record for NEPA Assignment Program projects. The folder structure in ProjectWise outlines the potential components of a

complete project file that consultants and staff should populate, and UDOT's Environmental Document File Management guidance explains methods for organizing project files. In addition, the Environmental Performance Manager reviews project folders in ProjectWise to ensure that all project files are organized in accordance with the file structure. These measures have noticeably improved the organization and completeness of project files since the first two audits.

Quality Assurance/Quality Control

Successful Practices

The Audit Team learned through the PAIR response and interviews that, in response to Audit #2, UDOT had revised the Environmental Document Review Tool to differentiate requirements for EAs and EISs. The UDOT had also created a new checklist for QA/QC. In interviews, UDOT staff recognized that they may need to further revise procedures to ensure documentation is complete, and stated that they are committed to continuing to revise and implement their process to document legal sufficiency findings on all documents requiring findings in accordance with UDOT's Manual of Instruction (MOI) and QA/QC plan. The UDOT staff's weekly project meetings, as well as their biweekly meetings to talk about issues that arise in the environmental program, are ways they can continue to refine their processes.

Legal Sufficiency

Successful Practice

The UDOT Environmental Managers work directly with outside counsel. The UDOT Environmental Managers, an Assistant AG, and outside counsel hold quarterly meetings during which UDOT apprises counsel of upcoming project reviews and anticipated review deadlines. These quarterly meetings are one of UDOT's strategies for keeping the Assistant AG assigned to UDOT apprised of all communications between UDOT staff and outside counsel.

Training

Observation #1

The UDOT continues to update its training plan on an annual basis, as required under Section 12.2 of the MOU. During the audit period UDOT provided its staff 12 training opportunities on NEPA and other environmental requirements, in accordance with the training plan. Section 12.2 of the MOU states that ''UDOT and FHWA, in consultation with other Federal agencies as deemed appropriate, will assess UDOT's need for training and develop a training plan.'' During interviews, however, USACE, staff stated they have not had the opportunity to provide input on UDOT's training plan. The USACE expressed that their staff may benefit from training to better understand UDOT's highway design standards, requirements, and policies. Interagency discussions regarding training needs may identify opportunities for cross-training with the potential to improve interagency communication and coordination, and lead to more efficient permit review and consultation processes.

Performance Measures

Successful Practices

The UDOT's self-assessment documented the performance management details of the NEPA Assignment Program in Utah, which demonstrates UDOT's procedures under NEPA assignment have resulted in a reduction in the time needed to complete DCEs, EAs, and EISs. The average time to complete environmental documents is 7 months for DCEs, 24 months for EAs, and 37 months for EISs. Although these data are based on a limited number of completed UDOT NEPA reviews since January 2017, UDOT's initial timeliness results are promising.

The UDOT regularly updates their MOI to continuously improve their policies and procedures. During this audit period, UDOT updated their MOI in September 2018. The UDOT has polled resource agencies every year to get feedback on their performance. The UDOT's self-assessment documents that, although they had a lower response rate to their annual resource agency poll this year (24 percent) compared to last year (50 percent), the overall evaluation rating is 4 percent higher than the ratings prior to NEPA assignment. The UDOT recognized that the low response rate may be due to timing (UDOT sent the surveys in the summer and allowed 2 weeks for responses). In interviews with the USACE, the Audit Team heard that the distribution method may also be a factor. The USACE suggested that UDOT find a way to give the survey more visibility (*e.g.,* discuss it at the bimonthly meeting, phone call in advance of the email, have it come from someone they work with regularly).

Non-Compliance Observation

Non-compliance observations are instances where the Audit Team found UDOT was out of compliance or deficient in proper implementation of a Federal regulation, statute, guidance, policy, the terms of the MOU, or UDOT's own procedures for compliance with the NEPA process. Such observations may also include instances where UDOT has failed to maintain technical competency, adequate personnel, and/or financial resources to carry out the assumed responsibilities. Other non-compliance observations could suggest a persistent failure to adequately consult, coordinate, or consider the concerns of other Federal, State, Tribal, or local agencies with oversight, consultation, or coordination responsibilities. The FHWA expects UDOT to develop and implement corrective actions to address all non-compliance observations.

The following non-compliance observation relates to UDOT not complying with the State's environmental review procedures.

Non-Compliance Observation #1—Issuing a Document Without Final Legal Sufficiency Finding

As noted in UDOT's Self-Assessment and confirmed through audit interviews and project file reviews, the Audit Team learned that in the case of one project's individual Section 4(f) evaluation, while outside counsel reviewed and commented on the draft evaluation prior to its release, the project file contained no documentation demonstrating that the required legal sufficiency review was completed pursuant to 23 CFR 771.125(b) and/or 23 CFR 774.7(d) prior to UDOT's approval of the evaluation. This was also not in accordance with UDOT's QA/QC plan, Section 4.1.B, which requires the reviewing attorney provide the Environmental Program Manager with written documentation that the legal sufficiency review has been completed. The UDOT's response to the draft audit report indicated that they have since implemented a standard checklist form, to be completed by legal counsel, to document their project review to clarify the documentation of legal sufficiency reviews.

Response to Public Comments on the Draft Report and the Final Report

The FHWA received one comment from the American Road & Transportation Builders Association (ARTBA) in general support of UDOT's implementation of the NEPA Assignment Program to accelerate Federal-aid highway program and project delivery in Utah. The FHWA appreciates ARTBA's input and determined that there is no need to revise the draft audit report in response to ARTBA's comment. Therefore, FHWA is finalizing UDOT's third NEPA

Assignment audit report with this **Federal Register** notice.

[FR Doc. 2022–23914 Filed 11–2–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2021–0019]

Surface Transportation Project Delivery Program; Alaska Department of Transportation Fourth Audit Report

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act (MAP–21) established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This notice announces and solicits comments on the fourth audit report for the Alaska Department of Transportation and Public Facilities (DOT&PF).

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. David T. Williams, Office of Project Development and Environmental Review, (202) 366–5074, *David.Williams@dot.gov,* or Mr. Patrick Smith, Office of the Chief Counsel, (202) 366–1345, *Patrick.C.Smith@dot.gov*; Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The Alaska DOT&PF published its application for NEPA assumption on May 1, 2016; and made it available for public comment for 30 days. After considering public comments, DOT&PF submitted its application to FHWA on July 12, 2016. The application served as the basis for developing a memorandum of understanding (MOU) that identified the responsibilities and obligations that DOT&PF would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on August 25, 2017, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and DOT&PF considered comments and proceeded to execute the MOU. Effective November 13, 2017, DOT&PF assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. The FHWA published a notice regarding the third audit report in the **Federal Register** on December 7, 2020, soliciting comments for 30 days pursuant to 23 U.S.C. 327(g). The FHWA received comments on the draft report from the American Road & Transportation Builders Association (ARTBA). The ARTBA's comments were supportive of the Surface Transportation Project Delivery Program and did not relate specifically to the audit. The team has considered these comments and is finalizing the audit report. This notice announces the availability of the fourth audit report to the DOT&PF and solicits public comment on the same.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C 327; 23 CFR 773.

Stephanie Pollack,

Deputy Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program, FHWA's Audit of the Alaska Department of Transportation

April 12–16, 2021

Executive Summary

This report summarizes the results of the Federal Highway Administration's (FHWA) fourth audit of the Alaska Department of Transportation and Public Facilities' (DOT&PF) assumption of FHWA's project-level National Environmental Policy Act (NEPA) responsibilities and obligations pursuant to a 23 U.S.C. 327 Memorandum of Understanding (MOU). The DOT&PF entered the NEPA Assignment Program after more than 8 years of experience making FHWA NEPA Categorical Exclusion (CE) determinations pursuant to 23 U.S.C. 326 (beginning September 22, 2009).

Alaska's MOU became effective on November 13, 2017; and was amended on August 20, 2020. Currently, FHWA's NEPA responsibilities in Alaska include the oversight and auditing of the DOT&PF's execution of the NEPA Assignment Program and certain activities excluded from the MOU, such as the NEPA reviews of projects advanced by direct recipients other than the DOT&PF.

The FHWA audit team began to prepare for the site visit in November 2020. The audit team reviewed DOT&PF's NEPA project files, DOT&PF's response to FHWA's pre-

audit information request (PAIR), and DOT&PF's Self-Assessment Report. On April 12–16, 2021, the audit team conducted a virtual site visit for the second year due to COVID–19 pandemic safety concerns, rather than on-site visits as had been used for the first two audits.

The audit team appreciates DOT&PF's responsiveness to the questions regarding the status of general observations from the third audit. This report concludes with a status update for FHWA's observations from the third audit report.

The audit team finds DOT&PF in substantial compliance with the terms of the MOU in meeting the responsibilities it has assumed. This report does not identify any non-compliance observations; it does identify four general observations and three successful practices.

Background

The NEPA Assignment Program allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for highway projects. This program is codified at 23 U.S.C. 327. When a State assumes these Federal responsibilities for NEPA project decisionmaking, the State becomes solely responsible and solely liable for carrying out these obligations in lieu of and without further NEPA-related approval by FHWA.

The FHWA assigned responsibility for making project NEPA approvals and other related environmental decisions for highway projects to DOT&PF. The MOU documents these responsibilities. Examples of responsibilities DOT&PF has assumed, in addition to NEPA, include Section 7 consultation under the Endangered Species Act and consultation under Section 106 of the National Historic Preservation Act.

This is the last of the four required annual audits pursuant to 23 U.S.C. 327(g) and Part 11 of the MOU. The FHWA uses audits as the primary mechanism to oversee DOT&PF's compliance with the MOU and the NEPA Assignment Program requirements. This includes ensuring compliance with applicable Federal laws and policies, evaluating DOT&PF's progress toward achieving the performance measures identified in Section 10.2 of the MOU, and collecting information needed for DOT Secretary's annual report to Congress. The FHWA must present its audit results in a report and make it available for public comment in the **Federal Register**.

The audit team included NEPA subject matter experts from FHWA Alaska Division Office, the Headquarters Office of Project Development and Environmental Review, the Resource Center, Western Legal Services Division, Office of Stewardship, Oversight and Management, and the DOT Volpe Center.

Scope and Methodology

The audit team examined a sample of DOT&PF's NEPA project files, DOT&PF responses to the PAIR, and DOT&PF's Self-Assessment Report. The audit team also conducted interviews and reviewed DOT&PF policies, guidance, and manuals pertaining to NEPA responsibilities. All reviews focused on objectives related to the six NEPA Assignment Program elements contained in the MOU: Program Management, Documentation and Records Management, Quality Assurance/Quality Control (QA/QC), Training, Performance Measures, and Legal Sufficiency.

Project File Review: To consider DOT&PF staff adherence to program procedures and Federal requirements, the audit team selected a sample of 47 individual project files for which the environmental review had been completed. The audit team evaluated DOT&PF's compliance with assumed responsibilities and adherence to their own processes and procedures for project-level environmental decisionmaking. The audit team did not evaluate DOT&PF's project-specific decisions. The sampled files included CEs, Environmental Assessments (EA), and environmental reevaluations.

PAIR Review: The audit team reviewed DOT&PF's responses to the PAIR, which consisted of 28 questions about specific elements in the MOU that DOT&PF must implement. The audit team used these responses to develop specific follow-up questions for interviews with DOT&PF staff.

DOT&PF Self-Assessment Review: The audit team reviewed DOT&PF's December 2020 Self-Assessment Report and used it to develop specific follow-up questions for interviews with DOT&PF staff. The NEPA Assignment Program MOU Section 8.2.5, requires the DOT&PF to conduct annual self-assessments of its QA/QC procedures and performance.

Interviews: The audit team conducted interviews with 17 DOT&PF employees, including staff from each of DOT&PF's 3 regional offices and the Statewide Environmental Office (SEO). The audit team invited DOT&PF employees representing a diverse range of expertise, experience, and program responsibility to participate in interviews.

In addition, the audit team conducted interviews of two attorneys with the Alaska Department of Law and interviews with individuals at the Bureau of Land Management (BLM), the United States Forest Service (USFS), and the State Historic Preservation Office (SHPO).

Policy/Guidance/Manual Review: Throughout the document reviews and interviews, the audit team verified information on DOT&PF's NEPA Assignment Program using DOT&PF policies, guidance, manuals, and reports. These included the Environmental Program Manual (EPM), the NEPA Assignment QA/QC Plan, the NEPA Assignment Program Training Plan, and the NEPA Assignment Self-Assessment Report.

Overall Audit Opinion

This report identifies four observations and three successful practices. The audit team finds DOT&PF is substantially in compliance with the provisions of the MOU, has carried out the environmental responsibilities it assumed through the NEPA Assignment Program, and has taken steps to address observations identified in the third audit.

Non-Compliance Observations

The audit team did not make any non-compliance observations in the fourth audit.

Observations and Successful Practices

This section summarizes the audit team's observations of DOT&PF's NEPA Assignment Program implementation and DOT&PF's successful practices. ''Observations'' are items the audit team would like to draw DOT&PF's attention to, which may benefit from revisions to improve processes, procedures, or outcomes, if such steps have not already been taken. ''Successful practices'' are those that FHWA would like to commend DOT&PF on developing. These may include ideas or concepts that DOT&PF has planned, but not yet implemented. Successful practices and observations are described under the six MOU topic areas: Program Management, Documentation and Records Management, QA/QC, Training, Performance Measures, and Legal Sufficiency.

This audit report provides an opportunity for DOT&PF to take further actions to improve their program. The FHWA will consider the status of areas identified for potential improvement in this audit's observations as part of the scope of future monitoring events.

DOT&PF will continue to be able to describe program improvements in their annual Self-Assessment reports.

Program Management

Program Management includes the overall administration of the NEPA Assignment Program. The audit team noted the following successful practices and observations related to Program Management.

Successful Practice #1: Business Program Management (BPM) System

Interviewees overwhelmingly responded positively to questions regarding the development and implementation of the BPM system. They acknowledged the efforts by the developers and SEO to include the following: virtual training sessions and demonstrations, creation of a user's manual, PowerPoint handouts, and beta testing with Regional Environmental Managers to work through ''bugs'' in the system.

Observation #1: Permitting Dashboard Reporting Procedures

Section 5.1.1 of the MOU subjects DOT&PF to the same procedural requirements and substantive requirements that apply to the DOT Secretary including, but not limited to Federal statutes or FHWA policy. Per 23 U.S.C. 139 and Memorandum from Deputy Assistant Secretary for Transportation Policy, *Federal Permitting Dashboard Reporting Standard,* December 28, 2018, EA and Environmental Impact Statement (EIS) project information is required to be entered in the Federal Infrastructure Permitting Dashboard. The Permitting Dashboard Reporting Standards require EIS's and EA's permitting timetables to be entered in the dashboard: (1) within 90 days after the issuance of a Notice of Intent for an EIS, or (2) the class of action determination for an EA initiated after June 2016. Based on interviews, only one project has been entered into the Permitting Dashboard, which FHWA verified. Based on DOT&PF records, three projects should have been entered into the Dashboard. The FHWA understands that DOT&PF does not have written procedures regarding how to carry out these responsibilities. Written procedures would provide opportunities for consistent, timely, and compliant reporting of the projects required to be in the dashboard.

Documentation and Records Management

Documentation and Records Management includes maintaining project files and other recordkeeping (whether hardcopy or electronic) pertaining to the DOT&PF's discharge of the responsibilities it has assumed under the 23 U.S.C. 327 Program. From November 1, 2019, through October 31, 2020, the DOT&PF made 228 project decisions. Through employing both random and judgmental sampling procedures, the audit team identified 47 project decisions to review.

Successful Practice #2: Tracking

Interviews with Section 106 Professionally Qualified Individuals (PQI) revealed the use of an Excel database in at least one DOT&PF region to track and manage Section 106 information for projects. Tracking information on consultation letters, determinations of eligibility, effect findings, SHPO concurrence, etc. allows the PQI to stay on top of required tasks and ensure work is completed. Once Section 106 consultation is completed, the PQI enters this data into the SEO Access database tracking system that is used for the Section 106 Programmatic Agreement monitoring and annual reporting.

Observation #2: Documentation of Public and Agency Comments in CE

In 6 of 21 (28 percent) CE project files reviewed, there was inadequate documentation of public and/or agency comments and resolution of the comments. This is not in accordance with Chapter 4 of the DOT&PF Highway Preconstruction Manual, which requires that CE Forms ''list the issues raised by the public and agencies and the manner in which they were resolved.'' In addition, this observation appears to be inconsistent with data reported in Section 9.2.2. (*Maintain completeness and adequacy of documentation of SEO records for projects done under the program*) of DOT&PF's 2020–2021 Self-Assessment Report.

Interview responses to questions about public involvement requirements for CEs were varied. Some interviewees responded that they follow the guidance in the Environmental Procedures Manual. Several interviewees spoke to responding directly to commenters via emails or letters and the potential for controversy to affect the class of action decision. However, none specifically mentioned the need to document comments and/or controversy and DOT&PF's responses to them on the CE forms. The FHWA recommends that DOT&PF incorporate procedures for documenting public involvement for CEs when appropriate into the EPM.

Quality Assurance/Quality Control

Under Section 8.2.4 of the MOU, DOT&PF agreed to carry out regular QA/QC activities in accordance with the MOU and DOT&PF procedures established to implement the NEPA Assignment Program. Based on the information evaluated by the audit team, DOT&PF continues to carry out regular QA/QC activities in accordance with the MOU. The FHWA believes the BPM system provides more opportunity to augment data collection and reporting for continued program improvement.

Observation #3: The State's Commitment of Adequate Resources and QA/QC Performance

Sections 4.2.1 and 4.2.2 of the MOU outline the requirements for the State's commitment of adequate resources to carry out NEPA Assignment successfully. Moderate to high staff turnover has been a recurring issue. This has been documented in Audit #1 report Observation #3 and Audit #2 report Observation #3. In the January 2020 Self-Assessment Report, DOT&PF acknowledged the issue and indicated that they will continue to track staffing impacts on the program through the QA/QC process. During Audit #4, FHWA documented comments from multiple DOT&PF staff in some of the regions concerning workload, staffing, and turnover issues affecting QA/QC processes and observed a downward trend in QA/QC performance (*i.e.,* more errors and omissions in NEPA approvals relative to the previous audit performance period). In addition, interviews with SHPO suggested some of the Section 106 challenges, such as incomplete applications during Section 106 consultations, may be due to workload issues at DOT&PF. Despite these observations, FHWA found that DOT&PF's implementation of the 327 Program was in substantial compliance with the MOU. The FHWA encourages DOT&PF to continue to assess how workload, staffing, and turnover issues might affect the level of compliance with the 327 MOU, organizational performance for carrying out NEPA Assignment and overall program delivery, and consider using tools like the BPM system, resource sharing, increased use of consultants, and other approaches to help address workload and staffing issues raised by some regions as well as the QA/QC performance issues indicated in the most recent self-assessment and observed by the audit team.

Training

Under Sections 12.1 and 12.2 of the MOU, the DOT&PF committed to implementing training necessary to carry out the environmental responsibilities assumed under the NEPA Assignment Program. The DOT&PF also committed to assessing its need for training, developing a training plan, and updating the training plan on an annual basis.

Observation #4: Training Needs Assessment

Considering ongoing staff turnover, as discussed in Observation #2, FHWA encourages DOT&PF to conduct a detailed statewide training needs assessment of all environmental staff. This will help DOT&PF allocate resources more efficiently to identify skill and knowledge gaps. The FHWA also encourages DOT&PF to explore cross training opportunities with other agencies (*e.g.:* SHPO, BLM, USFS) and engage them in development of their annual training plan.

Performance Measures

The FHWA and DOT&PF mutually established a set of performance measures to evaluate DOT&PF's performance in assuming NEPA Assignment Program responsibilities. The DOT&PF continues to collect, maintain, and develop data towards monitoring its performance as required by Section 10.1.3 of the MOU. The audit team noted the following observation related to Performance Measures.

Successful Practice #3: Relationships With Agencies

The audit team found that DOT&PF has very good and positive relationships with BLM, USFS, and SHPO. The FHWA has interviewed resource agencies in previous audits and found that overall, they had good working relationships with DOT&PF. The audit team decided to interview staff from BLM and the USFS during Audit #4 since Federal Land Management Agencies had not been interviewed in past audits and they were included in DOT&PF's May 2020 agency poll. The team also chose to interview SHPO since they had not been interviewed since Audit #1. The individuals interviewed from these three agencies indicated that overall, their working relationships with DOT&PF were very good and positive. This information correlates well with the overwhelmingly positive responses DOT&PF received to their agency poll.

Legal Sufficiency

Since 2017, the same attorney from the Alaska Attorney General's Office, Transportation Section, has been assigned to the NEPA Assignment Program. The assigned attorney has significant experience with Federal-aid highway projects and the Federal environmental process. The attorney works directly with DOT&PF staff on project environmental documents. Based on the interviews, the attorney becomes involved early in project development, normally reviewing a NEPA document before receiving a formal request for a legal sufficiency review. During the audit period, the attorney did not review an environmental impact statement or a Section 4(f) evaluation requiring a legal sufficiency review. Although a legal sufficiency review is not required for EAs, the attorney reviewed two EAs during the audit period. The review process for an EA is like the review process for an EIS.

Department of Law Management stated during the interviews that while one attorney is currently assigned to the program, should workload increase significantly another attorney could be assigned to NEPA work or litigation, likely through the utilization of outside counsel per 23 U.S.C. 327(a)(2)(G).

The audit team finds that DOT&PF meets the legal sufficiency determination and staffing requirements set forth in the DOT&PF Environmental Procedures Manual.

Status of Observations From Audit #3 Report (April 2020)

This section describes the actions DOT&PF has taken in response to observations made during the third audit.

Observation #1: Self-Assessment Procedures

The DOT&PF's 2018 NEPA Assignment Program Self-Assessment Procedures require that SEO develop the preliminary and final Self-Assessment report through coordination with, and input from, the Regional Environmental Managers (REMs). During Audit #3 interviews, the audit team found that DOT&PF did not develop the January 2020 Self-Assessment report in accordance with their procedures, nor distribute the final report to the regions. For Audit #4, DOT&PF indicated in their responses to the PAIR that the draft December 2020 Self-assessment was sent to the REMs for review and comment according to their procedures. Comments were received and addressed in the final Self-Assessment report, which was then shared with the regions.

Observation #2: Assessing Resource Agency Communication

Section 10.2.1 C. of the MOU requires DOT&PF to ''*Assess change in communication among DOT&PF, Federal and State agencies, and the public resulting from assumption of responsibilities under this MOU*''. The MOU allows DOT&PF to determine the method it will use to assess this change. The DOT&PF selected to use an annual resource agency poll. The DOT&PF identified this measure in its *DOT&PF NEPA Assignment Program Performance Measures* document located on its website. At the time of Audit #3, DOT&PF had not yet used a resource agency poll, and FHWA recommended that DOT&PF consider changing the method for reporting this measure.

In May 2020 (prior to Audit #4), DOT&PF conducted an agency survey to assess changes in communication among DOT&PF, State, and Federal resource agencies. As described in DOT&PF's Self-Assessment Report, the survey consisted of six questions distributed via an online platform to a representative cross section of State and Federal resource Agency staff. Twenty-four responses were received from 11 different resource agencies. The DOT&PF asked the question: ''Has the level of communication improved, declined, or remained the same since the MOU became effective?'' Eleven of the responses indicated that there had been an improvement in communication and the remaining responses indicated there had been no change.

[FR Doc. 2022–23916 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: El Paso County, Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Federal notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: FHWA, on behalf of TxDOT, is issuing this notice to advise the public that an EIS will be prepared for a proposed transportation project to study the effects of the project on Interstate Highway 10 (I–10), known as the Downtown 10 project. The limits of the proposed project are from Executive

Center Boulevard (Blvd.) to State Loop (SL) 478 (Copia Street) in El Paso County, Texas. The proposed project is approximately 5.7 miles in length.

FOR FURTHER INFORMATION CONTACT: Hugo Hernandez, TxDOT Project Manager, 13301 Gateway Boulevard West, El Paso, TX, 79928–5410, (915) 790–4243, *Downtown10@txdot.gov.*

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019 and executed by FHWA and TxDOT.

Purpose and Need

The Downtown 10 project is needed because of:

- Traffic congestion and mobility issues
- Concerns surrounding incident management
- Failure to meet current design standards

By providing a long-term transportation solution for the City of El Paso, El Paso County, and the region, the purpose of the proposed project is to:

- Improve mobility and long-term congestion management
- Improve incident management
- Bring the facility up to current design standards

Proposed Action

The proposed project would improve I–10 from Executive Center Blvd. and SL 478 (Copia Street), a distance of approximately 5.7 miles. Traveling through downtown El Paso, the proposed improvements may include widening and reconstruction of the mainlanes, continuous frontage roads, retaining walls, bridges, ramps, and cross streets to overcome deterioration of pavement and bridges to include bicycle and pedestrian facilities.

Alternatives

The EIS will evaluate a range of build alternatives and a no-build alternative.

Provided below is background information on alternative analyses conducted to date. From 2017 through 2019, the TxDOT Reimagine I–10 Corridor Study (study) included extensive public outreach and high-level engineering/environmental evaluations of future needs for the I–10 corridor. The study resulted in a recommended study alternative for the entire 55-mile-long corridor. As a result, the Downtown 10 project (Segment 2 of the study) was initiated, and the first Public Meeting was held virtually from June 25 through July 15, 2020. The Public Meeting showed the recommended study alternative and requested additional public and stakeholder input in order to create more detailed conceptual alternatives. After Public Meeting #1, TxDOT utilized detailed engineering and environmental constraint criteria and the public/stakeholder feedback to identify 18 build alternatives, which were narrowed to nine conceptual build alternatives. The constraint criteria included mobility, design, multimodal, and environmental considerations.

The conceptual alternatives were then screened to three viable build alternatives (Alternatives D, G, and H). This process was presented in Public Meeting #2 (held virtually from February 24 through March 16, 2021) for additional public feedback and further study. The no-build alternative has and will be carried through the process as a baseline condition. Possible build alternatives include the following:

Alternative D

Alternative D proposes reconstruction and widening of the existing I–10 facility. From Executive Center Boulevard to University Drive, Alternative D shifts the I–10 alignment to the north/east. From University Drive to Campbell Street, Alternative D follows the existing alignment. From Campbell Street to Ange Street, Alternative D shifts the I–10 alignment to the north. From Ange Street to Piedras Street, Alternative D shifts the I–10 alignment to the south. From Piedras Street to SL 478 (Copia Street), Alternative D follows the existing alignment. Alternative D proposes new eastbound and westbound non-tolled managed lanes called adaptive lanes, an additional eastbound and westbound general purpose lane, a bicycle and pedestrian bridge at Prospect Street, the addition of an eastbound one-way collector roadway between Kansas Street and Piedras Street, a shared use path from Executive Center Boulevard to University Drive and from Santa Fe Street to SL 478 (Copia Street), and bicycle and pedestrian accommodations along cross street bridges. Additional capacity, operational, and bicycle and pedestrian accommodations would be considered for this alternative.

Alternative G

Alternative G proposes reconstruction and widening of the existing I–10 facility. From Executive Center Boulevard to Yandell Drive, Alternative G shifts the I–10 alignment to the north/east. From Yandell Drive to Santa Fe Street Alternative G follows the existing alignment. From Santa Fe Street to Ange Street, Alternative G shifts the I–10 alignment to the north. From Ange Street to Piedras Street, Alternative G shifts the I–10 alignment to the south. From Piedras Street to SL 478 (Copia Street), Alternative G follows the existing alignment. Alternative G proposes new eastbound and westbound non-tolled managed lanes called adaptive lanes, an additional eastbound and westbound general purpose lane, the addition of one-way collector roadways (eastbound and westbound) between Executive Center Boulevard and Santa Fe Street, the addition of an eastbound one-way collector roadway between Kansas Street and Piedras Street, a shared use path from Executive Center Boulevard to SL 478 (Copia Street), bi-directional cycle tracks from Santa Fe Street to Stanton Street, and bicycle and pedestrian accommodations along cross street bridges. Additional capacity, operational, and bicycle and pedestrian accommodations would be considered for this alternative.

Alternative H

Alternative H proposes reconstruction and widening of the existing I–10 facility. From Executive Center Boulevard to Yandell Drive, Alternative H shifts the I–10 alignment to the north/east. From Yandell Drive to Santa Fe Street, Alternative H follows the existing alignment. From Santa Fe Street to Ange Street, Alternative H shifts the I–10 alignment to the north. From Ange Street to Piedras Street Alternative H shifts the I–10 alignment to the south. From Piedras Street to SL 478 (Copia Street), Alternative H follows the existing alignment. Alternative H proposes new eastbound and westbound non-tolled managed lanes called adaptive lanes, an additional eastbound and westbound general purpose lane, the addition of one-way collector roadways (eastbound and westbound) between Executive Center Boulevard and Santa Fe Street, the addition of an eastbound one-way collector roadway between Kansas Street and Piedras Street, eastbound and westbound collector-distributor connectors between Campbell Street and SL 478 (Copia Street), a shared use path from Executive Center Boulevard to SL 478 (Copia Street), bi-directional cycle tracks from Santa Fe Street to Stanton Street, and bicycle and pedestrian accommodations along cross street bridges. Additional capacity, operational, and bicycle and pedestrian accommodations would be considered for this alternative.

Potential Project Impacts

Section 106 and Section 4(f) Historic Properties. The proposed build alternatives will be evaluated for potential adverse impacts to historic properties (*i.e.,* properties that are eligible for or listed in the National Register of Historic Places) within the study area.

Environmental Justice (EJ). The proposed build alternatives will be evaluated for potential adverse impacts to EJ communities due to anticipated relocations as well as other impacts such as access, noise, and visual aesthetics. Additional analysis and public involvement will be conducted during the National Environmental Policy Act process to assess if the project would result in any disproportionately high and adverse effects on low-income and minority communities.

Air Quality. The project is located in the El Paso Moderate Nonattainment area for Particulate Matter (PM) 10, Attainment/Maintenance Area for Carbon Monoxide (CO), and the 2015 Marginal Nonattainment area for Ozone (O3). As such, the proposed build alternatives will be evaluated for potential adverse impacts to air quality and will be subject to a project level conformity determination.

The EIS will evaluate the potential impacts and benefits to the resources/communities identified above as well as the following other subject areas: Limited English Proficiency communities, land use, right-of-way, social and community resources, traffic noise, wildlife and threatened and endangered species, water resources, hazardous materials sites, and visual resources.

It is anticipated that the following would be required: Texas Antiquities Code permit and concurrence, Section 106 historic/archeological resources concurrence, Section 4(f) evaluation approval, U.S. Army Corp of Engineers Nationwide Permit(s), and conformity determination under the Clean Air Act.

Tentative Schedule

Agency Scoping Meeting: November 30, 2022

Public Scoping Meeting: November 30, 2022

In addition to the public scoping meeting, a public hearing will be held after the Draft EIS is prepared. Public notice will be given of the time and place of the hearing. After the public hearing and end of Draft EIS comment period, issuance of the Final EIS/Record of Decision is anticipated. If a build alternative is selected, all permits and authorization decisions would occur before construction. TxDOT will issue a single Final EIS and Record of Decision document pursuant to 23 U.S.C. 139(n)(2), unless TxDOT determines statutory criteria or practicability considerations preclude issuance of a combined document.

In accordance with 23 U.S.C. 139, cooperating agencies, participating agencies, and the public will be given an opportunity for continued input on project development. An in-person public scoping meeting is planned for Wednesday, November 30, 2022, from 4 p.m. to 7 p.m. MT at the El Paso Convention Center (Juarez Room) One Civic Center Plaza, El Paso, Texas, 79901. A virtual option will go live at 4 p.m. MT on November 30, 2022. Additional information on both options will be provided at *https://www.txdot.gov/* by searching for ''El Paso Downtown 10—Virtual Public Scoping Meeting with In-Person Option''.

The public scoping meeting will provide an opportunity for the public to review and comment on the draft coordination plan and schedule, the project's purpose and need, the range of alternatives, and methodologies and level of detail for analyzing alternatives. It will also allow the public an opportunity to provide input on any expected environmental impacts, anticipated permits or other authorizations, and any significant issues that should be analyzed in depth in the EIS. In addition to the public scoping meeting, a public hearing will be held after the draft EIS is prepared. Public notice will be given of the time and place of the hearing.

The public meeting will be conducted in English. If you need an interpreter or document translator because English is not your primary language or you have difficulty communicating effectively in English, one will be provided to you. If you have a disability and need assistance, special arrangements can be made to accommodate most needs. If you need interpretation or translation services or you are a person with a disability who requires an accommodation to attend and participate in the public meeting, please contact Lauren Macias-Cervantes, Public Information Officer, El Paso District, at *Lauren.MaciasCervantes@txdot.gov* or please call (915) 790–4341 no later than 4 p.m. MT, Monday, November 21, 2022. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

The public is requested to identify in writing potential alternatives, information, and analyses relevant to this proposed project. Such information may be provided in writing by mail to the TxDOT El Paso District Office, Attn: Downtown 10/Hugo Hernandez, 13301 Gateway Boulevard West, El Paso, Texas 79928–5410. Electronic comments may also be submitted by email to *Downtown10@txdot.gov* or through the virtual site. Additionally, members of the public may also call (915) 209–0027 and leave recorded comments. Comments must be received by January 11, 2023.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2022–23917 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2021–0020]

Surface Transportation Project Delivery Program; Arizona Department of Transportation Draft FHWA Audit Report

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: The Moving Ahead for Progress in the 21st Century Act established the Surface Transportation Project Delivery Program that allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under the National Environmental Policy Act (NEPA) for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This is the second audit of the Arizona Department of Transportation's (ADOT) performance of its responsibilities under the Surface Transportation Project Delivery Program (NEPA Assignment Program). This notice announces and solicits comments on the second audit report for ADOT.

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590. You may also submit comments electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone can search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). The DOT posts these comments, without edits, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Mr. Neel Vanikar, Office of Project Development and Environmental Review, (202) 366–2068, *neel.vanikar@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or Mr. Patrick Smith, Office of the Chief Counsel, (202) 366–1345, *patrick.c.smith@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

Background

The Surface Transportation Project Delivery Program, codified at 23 U.S.C. 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The ADOT published its application for NEPA assumption on June 29, 2018, and solicited public comment. After considering public comments, ADOT submitted its application to FHWA on November 16, 2018. The application served as the basis for developing a memorandum of understanding (MOU) that identifies the responsibilities and obligations that ADOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on February 11, 2019, at 84 FR 3275, with a 30-day comment period to solicit the views of the public and Federal agencies. After the close of the comment period, FHWA and ADOT considered comments and proceeded to execute the MOU. Effective April 16, 2019, ADOT assumed FHWA's responsibilities under NEPA, and the responsibilities for NEPA-related Federal environmental laws described in the MOU.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. This notice announces and solicits comments on the second audit report for ADOT.

Authority: Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

Stephanie Pollack,

Deputy Administrator, Federal Highway Administration.

Surface Transportation Project Delivery Program

Draft FHWA Audit #2 of the Arizona Department of Transportation

Executive Summary

This is Audit #2 of the Arizona Department of Transportation's (ADOT) assumption of National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of Title 23 United States Code (U.S.C.) Section 327, ADOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on April 16, 2019, to memorialize ADOT's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for highway projects in Arizona. This 23 U.S.C. 327 MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA), environmental impact statements (EIS), and non-designated individual categorical exclusions (CE). A separate MOU between FHWA and ADOT, pursuant to 23 U.S.C. 326, authorizes environmental review responsibilities for other CEs. This audit does not cover the CE responsibilities and projects assigned to ADOT under the 23 U.S.C. 326 MOU.

The FHWA conducted an audit of ADOT's performance according to the terms of the MOU from March 29 to April 1, 2021. Prior to the audit, the FHWA audit team reviewed ADOT's environmental manuals and procedures, NEPA project files, ADOT's response to FHWA's pre-audit information request (PAIR), and ADOT's NEPA Assignment Self-Assessment Report. During the March 2021 audit, the audit team conducted interviews with staff from ADOT Environmental Planning (EP) and the Arizona Attorney General's Office (AGO) and prepared preliminary audit results. The audit team presented these preliminary results to ADOT EP leadership on April 1, 2021. The audit team conducted a completely virtual site visit rather than its traditional onsite visit due to national health emergency travel restrictions.

Overall, the audit team found that ADOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and ADOT's application. The ADOT continues to develop, revise, and implement procedures and processes required to deliver its NEPA Assignment Program. This report describes several observations and successful practices. Through this report, FHWA is notifying ADOT of two non-compliance observations that require ADOT to take corrective action. By addressing the observations in this report, ADOT will continue to assure successful program assignment.

Background

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation entails the need to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the second audit in Arizona and ADOT's progress towards meeting the program review

objectives identified in the MOU. Following this audit, FHWA will conduct two additional annual NEPA Assignment Program audits in Arizona.

Scope and Methodology

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). The definition of an audit is one where an independent, unbiased body makes an official and careful examination and verification of accounts and records, especially of financial accounts. Auditors who have special training with regard to accounts or financial records may follow a prescribed process or methodology in conducting an audit of those processes or methods. The FHWA considers its review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about ADOT's assumption of environmental responsibilities.

The audit team consisted of NEPA subject matter experts (SME) from FHWA Headquarters, Resource Center, Office of the Chief Counsel, and staff from FHWA's Arizona Division. This audit is an unbiased official action taken by FHWA, which included an audit team of diverse composition, and followed an established process for developing the review report and publishing it in the **Federal Register**.

The audit team reviewed six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); performance measures; legal sufficiency; and training. The audit team considered two additional focus areas for this review: the procedures contained in 40 CFR part 93 for project-level conformity and the procedures contained in Section 4(f) of the U.S. Department of Transportation Act of 1966, codified in 49 U.S.C. 303 and 23 U.S.C. 138 (otherwise known as Section 4(f)). This report concludes with a status update for FHWA's observations from the first audit report.

The audit team conducted a careful examination of ADOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of ADOT's project files. Other documents, such as ADOT's PAIR responses and ADOT's Self-Assessment Report, also informed this review. In addition, the audit team interviewed ADOT staff via videoconference.

The timeframe defined for this second audit includes highway project environmental approvals completed between January 1, 2020, and December 31, 2020. During this timeframe, ADOT completed NEPA approvals and documented NEPA decision points for nine projects. Due to the small sample size, the audit team reviewed all nine projects. This consisted of three EAs with a Finding of No Significant Impact, two EAs initiated with scoping completed, three EA re-evaluations, and one individual CE.

The PAIR submitted to ADOT contained 24 questions covering all 6 NEPA Assignment Program elements. The audit team developed specific follow-up questions for the interviews with ADOT staff based on ADOT responses to the PAIR. The audit team conducted a total of 13 interviews. Interview participants included staff from ADOT EP and the Arizona AGO.

The audit team compared ADOT manuals and procedures to the information obtained during interviews and project file reviews to determine if ADOT's performance of its MOU responsibilities is in accordance with ADOT procedures and Federal requirements. The audit team documented individual observations and successful practices during the interviews and reviews and combined these under the six NEPA Assignment Program elements. The audit results are described below by program element.

Overall Audit Opinion

The audit team found ADOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and ADOT's application. FHWA is notifying ADOT of two non-compliance observations that require ADOT to take corrective action. By addressing the observations cited in this report, ADOT will continue to ensure a successful program.

Successful Practices and Observations

Successful practices are practices that the team believes are positive and encourages ADOT to consider continuing or expanding those programs in the future. The audit team identified numerous successful practices in this report.

Observations are items the audit team would like to draw ADOT's attention to, which may improve processes, procedures, and/or outcomes. The team identified four observations in this report.

Non-compliance observations are instances where the audit team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. FHWA expects the State to develop and implement corrective actions to address all non-compliance observations. The audit team identified two non-compliance observations in this report.

The audit team shared initial results during the closeout meeting with ADOT and shared the draft audit report with ADOT to provide them the opportunity to clarify any observation, as needed, and/or begin implementing corrective actions to improve the program. FHWA will consider actions taken by ADOT to address these observations as part of the scope of the third audit.

Successful Practices and Observations

Program Management

Successful Practice #1

ADOT EP continues to maintain several guidance manuals for implementing NEPA Assignment and evaluating environmental resources. These manuals are readily available online at ADOT's environmental website. ADOT continuously updates its manuals and ensures staff are informed of updates. Staff noted the benefit of utilizing the guidance manuals and having better defined procedures.

Successful Practice #2

During interviews with staff, the audit team learned that ADOT EP has increased internal communication and coordination by holding monthly meetings with the NEPA Assignment Program managers and technical area program managers, and by holding biweekly meetings with program managers. ADOT EP's internal communication efforts also included emails and informal staff interactions.

Successful Practice #3

During interviews with staff, the audit team learned that staff felt a benefit of NEPA Assignment has been an increased sense of ownership and responsibility for the program and decisions. Program managers indicated that staff at all levels within ADOT had become more engaged in the NEPA Assignment Program.

Observations

Observation #1: Deficiencies and Gaps in ADOT's Manuals and Procedures

The audit team reviewed ADOT's manuals and procedures as part of the evaluation of ADOT's performance of its MOU responsibilities. Section 4.2.4 of the MOU specifies that ADOT must implement procedures to support appropriate environmental analysis and

decisionmaking under NEPA and associated laws and regulations. The audit team identified the following deficiencies in ADOT's manuals and procedures which may result in incomplete project documentation or analysis and increase the risk for non-compliance:

- The ADOT CE Checklist Manual and the ADOT EA/EIS Manual contain different procedures for completing re-evaluations and the process for re-evaluations for EA/EISs is not well-defined. During interviews, staff described variations in the procedures for completing and documenting re-evaluations.
- The ADOT Section 4(f) Manual, documentation forms, and desk reference/matrix contain information inconsistent with FHWA guidance and regulation, as identified below:
  - The manual, desk reference/matrix, ''Section 4(f) Applicability/Exceptions'' form, and ''No Section 4(f) Property/Use'' form incorrectly state that the exception for archaeological sites applies only to Section 106 adverse effect findings. The archaeological exception can be applied to both no adverse effect and adverse effect findings. Moreover, resources resulting in either finding must still be evaluated for Section 4(f) applicability and potential uses. The incorrect information in ADOT's materials creates the risk of inadequately evaluating archaeological sites with a finding of no adverse effect for Section 4(f) purposes, and not consulting with the official with jurisdiction when the archaeological exception is applied.
  - The manual, desk reference/matrix, and ''No Section 4(f) Property/Use'' form incorrectly state that a Section 106 no adverse effect finding equates to a Section 4(f) ''no use.'' While it is possible for a Section 4(f) ''no use'' to apply in cases of no adverse effect findings, this is not automatic, and resources should be evaluated on an individual basis to determine potential uses. The project file should include information demonstrating that a ''no use'' determination is appropriate and the factors that support that decision. The incorrect information in ADOT's materials creates the risk of inadequately evaluating all eligible historic properties for potential uses.
  - The ''Section 4(f) *De Minimis* Impact on Public Parks, Recreational Areas and Wildlife/Waterfowl Refuges'' form incorrectly indicates that meeting minutes alone can be used to document written concurrence from the official with jurisdiction. Meeting minutes can be used to demonstrate that communicating potential impacts and coordinating with the official with jurisdiction occurred, but written concurrence should be documented through formal correspondence (*e.g.,* signed letter or form, or email responses).

Documentation and Records Management

Successful Practice #4

During interviews, staff indicated increased efforts to coordinate with the ADOT Communications Office and the ADOT Civil Rights Office on public involvement activities conducted for projects.

Successful Practice #5

ADOT continues to implement its standard folder structure for consistent record keeping and assistance with QA reviews. Staff commented that the standard folder structure was a helpful tool and improved process for maintaining project files.

Successful Practice #6

ADOT EP has developed standard templates (checklists, forms) for various decision-points and processes. Staff noted that using the standard templates during the environmental review process has increased the consistency of project documentation.

Observations

Section 4.2.4 of the MOU specifies that ADOT must implement procedures to support appropriate environmental analysis and decisionmaking under NEPA and associated laws and regulations. The audit team identified several inconsistencies between ADOT's procedures for documenting project decisions (as identified in the ADOT CE Checklist Manual, ADOT EA/EIS Manual, ADOT Section 4(f) Manual, ADOT QA/QC Plan, and ADOT Project Development Procedures Manual) and the project file documentation provided. ADOT was provided an opportunity during the audit, and during their opportunity to comment on the draft audit report, to clarify inconsistencies identified by the audit team and provide additional information regarding the project documentation. ADOT provided explanations to the audit team's questions and indicated where specific information was located in the project files but did not submit additional documents or files. FHWA did not consider this supplemental information to be sufficient for four audited projects.

Non-Compliance Observation #1: Deficiencies in Section 4(f) Evaluation of Archaeological Resources

ADOT's Section 4(f) Manual (Sections 3.3 and 3.4.2) and FHWA regulations, policies, and guidance provide information on determining the applicability of Section 4(f) to archaeological resources and determining if there is an exception or potential use. ADOT's Section 4(f) Manual (Sections 5.2 and 5.3) specifies procedures for documenting Section 4(f) uses of archaeological sites, exceptions per 23 CFR 774.13(b), and ''no use'' determinations. During Audit #1, FHWA identified inconsistencies with ADOT's Section 4(f) evaluation and documentation of archaeological sites which were included as an observation in the Audit #1 Report. The audit team observed similar inconsistencies during the project file reviews for this audit and identified the following procedural deficiencies relating to ADOT's Section 4(f) evaluation and documentation:

- One project file included a Section 106 adverse effect determination for two archaeological sites, indicating the presence of Section 4(f) resources and potential Section 4(f) uses. The consultation letter sent to the Arizona State Historic Preservation Officer did not state ADOT's intent to apply the archaeological exception to these sites or include other Section 4(f) information regarding these sites. No other consultation letters or other information was provided in the project file or NEPA document as to how these two sites were evaluated for Section 4(f).

Non-Compliance Observation #2: Deficiencies in Analysis of Right-of-Way Impacts

ADOT's procedures (ADOT EA/EIS Manual) and FHWA's regulations, policies, and guidance provide information on how to consider right-of-way impacts in the NEPA analysis. FHWA's regulations, policies, and guidance provide additional information on how early property acquisitions should be considered with the right-of-way impacts analysis. After completing the project file review, the audit team identified the following procedural deficiencies relating to ADOT's evaluation of right-of-way impacts:

- One project file did not demonstrate that early acquisition of properties and previous relocations were adequately addressed in the impact analysis in the NEPA document. The NEPA document stated that ADOT had acquired properties within the project corridor during previous planning and

environmental studies and that ADOT intended to incorporate these early acquisitions into the right-of-way needed for the current project. CEs previously completed for some of these early acquisitions included a complete NEPA evaluation. However, several CEs previously completed for early acquisitions were only for title transfer of the properties (per 23 CFR 771.117(d)(12)) and did not evaluate demolition, relocations, or other potential environmental impacts. The audit team requested additional information from ADOT regarding the NEPA analysis of these properties. ADOT responded that the project files and NEPA document contained a complete record and no additional documentation was available. Since the properties acquired as early acquisitions were incorporated into the right-of-way needed for the current project, these properties should have been included in the NEPA analysis, even though the properties were acquired during other planning and environmental studies. Based on the information provided in the project file and the NEPA document, it does not appear that all of the early acquisitions were fully evaluated in the NEPA analysis for the current project, nor were they accounted for in the total number of acquisitions required for the project (per 23 CFR 771.119(b)). The land use, environmental justice, community impacts, and indirect and cumulative impacts sections provided conflicting information regarding the impact analyses of these properties. Therefore, it is unclear how all the early property acquisitions were considered in the overall right-of-way impacts analysis in the NEPA evaluation.

Observation #2: Deficiencies in Section 4(f) Documentation of *de Minimis* Impact to Historic Properties

ADOT's procedures (ADOT Section 4(f) Manual Sections 5.1 and 5.4.2 and ADOT QA/QC Plan Section 5.1.1) specify completing the ''Section 4(f) *De Minimis* Impact for Historic Properties Form'' in addition to obtaining written concurrence from the official with jurisdiction.

After completing the project file review, the audit team found that two project files did not include the ''Section 4(f) *De Minimis* Impact for Historic Properties Form'' for *de minimis* impacts to historic properties.

Observation #3: Inconsistencies in Interagency Consultation Documentation

After completing the project file review, the audit team found several inconsistencies with ADOT's documentation of compliance with interagency consultation requirements (per 40 CFR 93.105). It is unclear if interagency consultation occurred for some projects since the project files did not include information on agency responses, concurrence, and the comment resolution process. Therefore, it is unknown if the interagency consultation agencies had an opportunity to participate in consultation or if ADOT provided them an opportunity to review and comment on the materials as required by 40 CFR 93.105 and MOU Section 7.2.1.

The audit team is aware that ADOT has increased efforts to follow up with agencies throughout interagency consultation and include email responses with consultation documentation and acknowledges ADOT's progress toward improving their processes.

Quality Assurance/Quality Control

The audit team verified that ADOT has procedures in place for QA/QC which are described in the ADOT QA/QC Plan and the ADOT Project Development Procedures. No observations were identified during this audit.

Performance Measures

Observations

Observation #4: Incomplete Development and Implementation of Performance Measures To Evaluate the Quality of ADOT's Program

The audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). ADOT's QA/QC Plan, PAIR response, and self-assessment report identified several performance measures, but all included limited reporting data for the review period. ADOT's reporting data primarily dealt with increasing efficiencies and reducing project delivery schedules rather than on measuring the quality of relationships with agencies and the general public, and decisions made during the NEPA process. The metrics ADOT has developed are not being utilized to provide a meaningful or comprehensive evaluation of the overall program. Additionally, ADOT's performance measures indicate a disconnect between its metrics and availability of reportable data. Staff indicated during interviews that performance measures are not an effective or useful tool in evaluating the program.

Legal Sufficiency

Through information provided by ADOT and interviews by the FHWA Office of Chief Counsel with two Assistant Attorneys General (AAGs) assigned to ADOT's NEPA Assignment Program, the auditors determined ADOT had not completed formal legal sufficiency reviews of assigned environmental documents during the audit period. Currently, ADOT retains the services of two AAGs for NEPA Assignment reviews and related matters. The assigned AAGs have received formal and informal training in environmental law matters.

Successful Practice #7

Through the interviews, the audit team learned ADOT seeks to involve its lawyers early in the environmental review phase, with AAGs participating in project coordination team meetings and reviews of early drafts of environmental documents. The AAGs will provide legal guidance at any time ADOT requests it throughout the project development process. For formal legal sufficiency reviews, the process includes a submittal package containing a request for legal sufficiency review. A letter finding of legal sufficiency would be included in the project file.

Training

The audit team reviewed ADOT's 2021 Training Plan and ADOT's PAIR responses pertaining to its training program. ADOT continues to maintain a strong training program by providing training opportunities to staff and dedicating time, effort, and resources toward its training program. To further support the training program, ADOT EP employs a dedicated training coordinator within the environmental section.

Successful Practice #8

During staff interviews, the audit team learned that the staff provides input on the training plan and that program managers meet quarterly to discuss training needs. Staff remarked on the availability of training offered to them and considered this to be a benefit to ADOT's NEPA Assignment Program. The audit team commends ADOT for adjusting to a virtual environment and offering online training opportunities for staff.

Status of Observations From the Audit #1 Report

This section describes the actions ADOT has taken (or is taking) in response to observations made during the first audit.

Non-Compliance Observation #1: Incomplete Project Files Submission

During Audit #1, ADOT submitted incomplete project files to FHWA by not uploading all files requested by FHWA to the file sharing website. For Audit #2, ADOT provided FHWA direct access to the project files requested for the project file review. ADOT has stated it intends to continue to utilize this method for sharing files with FHWA. ADOT also indicated it will continue to identify improvements in technology to increase efficiencies in file sharing. FHWA appreciates ADOT's efforts towards increasing the transparency and communication during the audit process, and better utilizing available technologies.

Non-Compliance Observation #2: Project-Level Conformity Compliance Issues

During Audit #1, the audit team found that ADOT's protocols do not provide for the appropriate consultation, coordination, and communication with FHWA and other agencies to ensure the projects meet the project-level conformity requirements where required. The audit team found documentation for two projects showing that ADOT staff did not coordinate with FHWA on the application of conformity requirements and found multiple projects that did not demonstrate ADOT's compliance with interagency consultation requirements (per 40 CFR 93.105). As part of Audit #2, the audit team learned that ADOT has made progress toward addressing these issues. ADOT and FHWA established a joint working group that resulted in developing draft coordination procedures and identifying increased communication methods, including monthly coordination meetings. During the file review for Audit #2, the audit team identified additional inconsistencies in the project files as described in the observations above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

Observation #1: Use of the Federal Infrastructure Permitting Dashboard

ADOT is responsible for inputting project information for assigned projects into the Federal Infrastructure Permitting Dashboard, per MOU Section 8.5.1 and in accordance with the Federal Permitting Dashboard Reporting Standard. During Audit #1, the audit team found that the dashboard did not include information for any of the applicable projects assigned to ADOT. ADOT has since obtained access to the dashboard, designated staff responsible for entering project data, and has updated the dashboard with relevant project information.

Observation #2: Inconsistencies and Deficiencies Based on the Review of Project File Documentation

After completing the project file review for Audit #1, the audit team identified several procedural deficiencies relating to the MOU, ADOT's procedures, and FHWA's regulations, policies, and guidance. To address this issue, ADOT has developed standard templates (forms, checklists) to increase consistency in project file documentation and has informed staff of documentation requirements. The audit team identified additional procedural deficiencies during Audit #2 as identified in the observations described above. FHWA recognizes ADOT's efforts toward improving its procedures and will continue to evaluate this area in subsequent audits.

Observation #3: Incomplete Development and Implementation of Performance Measures

During Audit #1, the audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). The Self-Assessment Report did not include reporting data for any of the performance measures. Due to the lack of performance measure data, the audit team determined that ADOT had not fully established and initiated data collection as it relates to performance metrics per the MOU. For Audit #2, the audit team reviewed ADOT's performance measures and reporting data submitted for the review period. ADOT has made progress toward developing and implementing its performance measures, though FHWA continues to identify this program objective as an area of concern, described in the observations above, and will continue to evaluate this area in subsequent audits.

Finalizing This Report

FHWA provided a draft of the audit report to ADOT for a 14-day review and comment period. ADOT provided comments which the audit team considered in finalizing this draft audit report. The audit team acknowledges that ADOT has begun to address some of the observations identified in this report and recognizes ADOT's efforts toward improving their program. FHWA is publishing this notice in the **Federal Register** for a 30-day comment period in accordance with 23 U.S.C. 327(g). No later than 60 days after the close of the comment period, FHWA will address all comments submitted to finalize this draft audit report pursuant to 23 U.S.C. 327(g)(2)(B). Subsequently, FHWA will publish the final audit report in the **Federal Register**. FHWA will consider the results of this audit in preparing the scope of the next annual audit. The next audit report will include a summary that describes the status of ADOT's corrective and other actions taken in response to this audit's conclusions.

[FR Doc. 2022–23915 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2017–0298]

Hours of Service of Drivers: Application for Exemption; Motion Picture Association

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew an exemption from the electronic logging device (ELD) requirements for all commercial motor vehicle (CMV) drivers providing transportation to or from a theatrical or television motion picture production site. The exemption requested by the Motion Picture Association (MPA), formerly known as the Motion Picture Association of America, allows these drivers to complete paper records of duty status (RODS) instead of using an ELD. The exemption renewal is for five years.

DATES: This renewed exemption is effective January 19, 2023, and expires on January 19, 2028. Comments must be received on or before December 5, 2022.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2017–0298 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–

140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number for this notice (FMCSA–2017–0298). Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment.

Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *pearlie.robinson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2017–0298), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission. To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2017–0298'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the Federal Motor Carrier Safety Regulations for a five-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' MPA has requested a five-year extension of the current exemption in Docket No. FMCSA–2017–0298.

III. Background

Current Regulatory Requirements

FMCSA's hours-of-service (HOS) regulations in 49 CFR 395.8(a)(1)(i) specify that a motor carrier subject to the requirements of part 395 must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in § 395.8(a)(1)(i)–(iv), as applicable. Subject to § 395.8(a)(1)(ii) and (iii), a motor carrier operating CMVs must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with 49 CFR part 395, subpart B.

Application for Renewal of Exemption

FMCSA published notice of MPA's initial application for exemption to this docket on October 27, 2017 (82 FR 49771). That notice described the nature of MPA's operations. FMCSA published a notice granting MPA's exemption request on January 19, 2018, which expires on January 19, 2023 (83 FR 2869). FMCSA found that MPA outlined the motion picture industry's unique operational issues and clearly explained the special handling of driver RODS that ensures a high level of accuracy to provide the equivalent level of safety.

MPA requests a renewal of the exemption for a five-year period. MPA states that approximately 8,300 CMV drivers operate CMVs on a full- or part-time basis for the motion picture industry. According to HOS data developed by third party compliance services, these drivers spend two hours, on average, driving each day, and drive about 40 miles per day. Their resulting RODs are often very complex, as are the driver HOS records that employing motor carriers must keep. Through close cooperation, the industry has been able to manage the extensive interchange of paper RODs that this work pattern requires. MPA asserts that the industry's success in HOS management is based on a system that is driver-based, rather than vehicle-based.

According to MPA, few drivers qualify for the short-haul driver exceptions in 49 CFR 395.1(e)(1) or 49 CFR 395.1(e)(2). Each time a driver operates a CMV for a different studio or production company, the motor carrier and driver must reconcile the driver's HOS record for the past week. Drivers manage the necessary paper RODS, carry them to each new CMV, and transfer paper copies to each new motor carrier as needed. When a roadside inspection occurs, a driver can produce paper RODS for review by the enforcement official.

MPA states that the motion picture industry maintains a database of driver HOS data. Drivers are required to submit their RODS within 24 hours of the duty period to which the record pertains. The RODS are reviewed by third-party auditing companies.

A copy of MPA's application for exemption is available for review in the docket for this notice.

IV. Equivalent Level of Safety

FMCSA determined in 2018 that exempt drivers and motor carriers would likely achieve an equivalent level of safety. FMCSA noted that Congress has recognized the unique aspects of the motion picture industry's operations and has provided statutory exceptions from some HOS regulations.[1] The industry's drivers generally operate short distances and normally spend much of their time off duty. Therefore, Congress has allowed these drivers longer workdays and drive time.

[1] See Section 4133 of SAFETEA–LU (119 Stat. 1744) (set out as a note to 49 U.S.C. 31136).

Because of the nature of their operations, motion picture industry drivers often use the same paper RODS from one carrier to another. In these unique circumstances, using an ELD system would not provide additional accuracy because most duty status information would be manually entered by the drivers. As MPA states, the paper log provides continuity for the carrier and enforcement to evaluate compliance, regardless of the number of carriers for which the driver is operating in a given 7-day or even 24-hour period. FMCSA acknowledges that, given the unique arrangements under which drivers in the motion picture industry routinely operate for multiple carriers over brief periods of time, paper RODS may prove more efficient than ELDs.

In addition, MPA members are required to submit their RODS within 24 hours, rather than waiting for the 13-day period allowed by 49 CFR 395.8. According to MPA, these ''RODS are reviewed by a third-party auditing company, resulting in accelerated reporting of HOS compliance and an independent assessment of accuracy.''

FMCSA concludes that provisionally extending the exemption for another five years, under the terms and conditions listed below, will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved without the exemption.

V. Exemption Decision

A. Grant of Exemption

FMCSA provisionally renews the exemption for a period of five years subject to the terms and conditions of this decision and the absence of public comments that would cause the Agency to terminate the exemption under Sec. V.F. below. The exemption from the ELD requirement under 49 CFR 395.8(a), is otherwise effective January 19, 2023, through January 19, 2028, 11:59 p.m. local time, unless renewed or rescinded.

B. Applicability of Exemption

The exemption allows all CMV drivers providing transportation to or from a theatrical or television motion picture production site to complete paper RODS instead of using an ELD.

C. Terms and Conditions

When operating under this exemption, motor carriers and drivers are subject to the following terms and conditions:

(1) Motor carriers and drivers must comply with all other applicable Federal Motor Carrier Safety Regulations (49 CFR part 350–399);

(2) Drivers must have a copy of this notice in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request;

(3) Drivers must not be subject to any out-of-service order or suspension of their driving privileges; and

(4) Carriers operating under this exemption may not have an ''Unsatisfactory'' rating with FMCSA or be subject to any imminent hazard or out-of-service orders.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Notification to FMCSA

Motor carriers operating under this exemption must notify FMCSA within five business days of any crash (as defined in 49 CFR 390.5), involving any of their CMVs operating under the terms of the exemption. The notification must include the following information:

(a) Identity of Exemption: ''MPA,''

(b) Name and USDOT number of the operating motor carrier,

(c) Date of the crash,

(d) City or town, and State, in which the accident occurred, or closest to the accident scene,

(e) Driver's name and license number,

(f) Vehicle number and State license number,

(g) Number of individuals suffering physical injury,

(h) Number of fatalities,

(i) The police-reported cause of the crash,

(j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

(k) The driver's total driving time and total on-duty time since the last ten (if operating under 49 CFR 395.3(a)) or eight (if operating under 49 CFR 395.1(p)) consecutive hours off-duty prior to the crash.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

F. Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. The exemption will be rescinded if: (1) motor carriers and drivers operating under the exemption fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objects of 49 U.S.C. 31136(e) and 31315.

VI. Request for Comments

FMCSA requests comments from parties with data concerning the safety record of CMV drivers providing transportation to or from a theatrical or television motion picture production site. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to rescind the exemption of the company or companies and drivers in question.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–23889 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0105]

General Qualifications of Drivers: Small Business in Transportation Coalition; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the Small Business in Transportation Coalition's (SBTC) request for an exemption from the requirement that motor carriers not permit a person to drive a commercial motor vehicle (CMV) unless the driver is capable of reading and speaking the English language sufficiently to communicate with the public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records drivers. SBTC requests the exemption on behalf of all motor carriers in North American Industry Classification System (NAICS) category 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance) with

revenues under $30 million. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that would ensure an equivalent level of safety or greater would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366–4225; *pearlie.robinson@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to *www.regulations.gov,* insert the docket number (''FMCSA–2022–0105'') in the ''Keyword'' box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click ''Browse Comments.''

To view documents mentioned in this notice as being available in the docket, go to *www.regulations.gov,* insert the docket number (''FMCSA–2022–0105'') in the ''Keyword'' box, click ''Search,'' and choose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulation Requirements

The regulations regarding qualifications of drivers in 49 CFR 391.11(a) prohibit a person from driving, and a motor carrier from requiring or permitting a person to drive, a CMV if the person is not qualified to do so. Under 49 CFR 391.11(b)(2) a person is qualified to drive a CMV if they can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.

IV. Applicant's Request

SBTC seeks an exemption from ''49 CFR 391.11(a) as it applies to 49 CFR 391.11(b)(2)'' on behalf of ''all motor carriers in NAICS category 484230 (Specialized Freight (except Used Goods) Trucking, Long-Distance) with revenues under $30 million, which are defined as 'small businesses' by the Small Business Administration.'' SBTC wrote that as long as FMCSA does not require states to test for language proficiency, ''it is inappropriate to enforce this rule against motor carriers, especially those small entities beyond one man owner operators employing drivers that do not have in-house compliance departments able to conduct their own state level-like testing for English proficiency.'' SBTC suggests that a motor carrier should be able to assert it is in compliance with 49 CFR 391.11(a) and 391.11(b)(2) the moment it verifies that a prospective driver has a state-issued commercial driver's license.

V. Equivalent Level of Safety

In its exemption application, SBTC stated: ''By temporarily placing the onus for compliance with the English proficiency standard solely on drivers and not motor carriers until such time as the FMCSA decides whether to shift responsibility for same to the states, we believe a level of safety that is equivalent to the level of safety that would be obtained by complying with the regulation will be achieved.''

VI. Public Comments

On June 15, 2022, FMCSA published notice of this application and requested public comments (87 FR 36200). The Agency received 10 comments from the public, with three comments from the applicant and seven from individuals opposing the proposed exemption.

Mr. Jimmy Walker wrote, ''Allowing this proposal to be accepted only makes roads and traffic more unsafe. It appears that [SBTC] is truly NOT interested in the public's safety, but is only interested in profits at the expense of more loss of life and property to others and the public.'' Mr. James Lamb responded to Mr. Walker's comments and noted that FMCSA failed to immediately post SBTC's exemption application. Mr. Lamb clarified that SBTC's position ''is about bringing attention and awareness to the fact that FMCSA has failed for 20 years to follow the USDOT Inspector General's recommendation that FMCSA should require states verify drivers' English proficiency rather than place the onus on carriers . . .''

Mr. Michael Milliard wrote, ''I support the SBTC's request to better our highways by reducing the number of non-English speaking drivers. I don't support the SBTC's request to except the drivers of small businesses from the English-speaking requirement.'' Mr. Carl Huddleston and Danko and Son's, Inc., commented that the exemption should not be granted because drivers who cannot read and speak English pose a danger to the public. Mr. Ricky Phillip added that a driver ''would be forced to use some sort of electronic device to translate directions which could cause distracted driving to increase'' and would not be able to read road signs. Finally, Ms. Tamra Howell commented that the exemption would diminish the effectiveness of other programs such as FMCSA's Compliance, Safety, Accountability program and the Drug and Alcohol Clearinghouse.

VII. FMCSA Safety Analysis and Decision

FMCSA evaluated SBTC's application and the public comments. In response to the comment that SBTC's application was not immediately posted to the docket, the Agency acknowledges that SBTC's application was posted to the public docket the day after the **Federal Register** notice published. FMCSA continued to monitor the public docket for comments filed after the comment closing date. FMCSA notes in response to SBTC's comment about the Department of Transportation's Office of

Inspector General's May 8, 2002, report titled ''Improving Testing and Licensing of Commercial Drivers,'' that the report does not support SBTC's exemption application. The report did not recommend that motor carriers should be exempt from the driver qualification regulations relating to the English language proficiency requirement.

Although SBTC made a conclusory statement that ''placing the onus for compliance with the English proficiency standard solely on drivers and not motor carriers'' would achieve an equivalent level of safety as complying with the regulations, SBTC did not explain how this would achieve an equivalent level of safety and did not propose any safety countermeasures. FMCSA concludes that SBTC has presented insufficient evidence to establish that not complying with the driver qualification regulations relating to the English language proficiency requirements for CMV drivers would meet or exceed the level of safety provided by complying with the regulations.

For the above reasons, FMCSA denies SBTC's request for exemption.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–23891 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0077]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on July 22, 2022,[1] Kansas City Southern (KCS) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2022–0077.

Specifically, KCS requests permission to decrease the limits of a centralized traffic control (CTC) block signal system, from mile post (MP) 9.9 to MP 11.2, near Laredo, Texas, as part of its Serrano Yard expansion project. This permanent change would include removing control point (CP) 10 and changing 1.3 miles of current CTC territory to yard limits at restricted speed. KCS requests the change to expand capacity for building trains in the Serrano Yard. In support of its petition, KCS states that the change will minimally affect the safety of operations because the maximum authorized speed in the area will decrease from 59 miles per hour to restricted speed yard limits. KCS also notes that this proposed change would bring the CTC/yard limits ''in coincidence between the main track and switching lead at CP 11, reducing the risk of confusion for on track equipment.''

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 3, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–23973 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0017]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 29, 2022,[1] Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances). The relevant FRA Docket Number is FRA–2017–0017.

Specifically, NS requests a waiver extension from § 236.566, *Locomotive of each train operating in train stop, train control or cab signal territory; equipped,* for: (1) all operations between and including the limits of control point (CP) Bright at mile post (MP) PC 28.2 and CP West Conway at MP PC 24.5; and (2) all movements on the Fort Wayne Line Tracks #1 and #2, both to and from CP Rochester, at MP PC 25.9 on the Cleveland Line, CP Bright on the Youngstown Line, and the yard tracks at East Conway. In support of its request, NS states that any movement directed by this relief will be at restricted speed and an absolute block will be established in advance of each movement.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a

[1] On October 13, 2022, KCS submitted a revised petition. Both the original and revised petitions are available in the docket (*https://www.regulations.gov/document/FRA-2022-0077-0001*).

[1] On October 13, 2022, NS submitted a revised petition. Both the original and revised petitions are available in the docket (*https://www.regulations.gov/document/FRA-2017-0017-0007*).

public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 3, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–23972 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0052]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on July 29, 2022, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances). The relevant FRA Docket Number is FRA–2011–0052.

Specifically, NS requests a waiver extension from § 236.566, *Locomotive of each train operating in train stop, train control or cab signal territory; equipped,* in four locations in the Keystone Division of Pennsylvania: (1) control point (CP) Cannon at mile post (MP) PT 118.9 to CP Harrisburg at MP PT 105.1 on the Pittsburgh Line; (2) CP Cannon MP PT 118.9 to CP Solomon at MP PT 352.5, on the Pittsburgh Line; (3) CP Rochester at MP PC 29.5 to CP Alliance at MP PC 83.2, on the Fort Wayne Line; and (4) CP Conpit at MP LC 0.00 to CP Penn at MP LC 77.8, on the Conemaugh Line. In these locations, NS seeks to continue to operate non-equipped engines used in switching and transfer service, with or without cars; work trains; wreck trains; ballast cleaners to and from work; and engines and rail diesel cars moving to and from shops. NS explains that an absolute block would be established in advance of each non-equipped movement. NS states that no incidents associated with the relief have been observed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by January 3, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–23971 Filed 11–2–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council; Meeting

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: The Internal Revenue Service Advisory Council will hold a public meeting.

DATES: The meeting will be held Wednesday, Nov. 16, 2022.

ADDRESSES: The meeting will be held in person.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Burch, Office of National Public Liaison, at 202–317–4219 or send an email to *PublicLiaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988), that a public meeting of the Internal Revenue Service Advisory Council (IRSAC) will be held on Wednesday, Nov. 16, 2022, from 9:00 a.m. to 1:00 p.m. EST.

The meeting will be held in person at 1111 Constitution Ave. NW, Washington, DC. To register, members of the public may contact Ms. Stephanie Burch at 202–317–4219 or send an email to *PublicLiaison@irs.gov.* Attendees are encouraged to arrive at the IRS visitor center at 1111 Constitution Ave. NW at least 30 minutes before the meeting begins.

Issues to be discussed may include, but are not limited to: *IRS Business and IT Modernization; Reduction in Electronic Filing Threshold for Information Reporting Filers; Alignment of Electronic Signature Requirements on Withholding Certificates; Section 1446(f): Withholding on Transfers of Interests in Publicly Traded Partnerships; Enabling Business Online Accounts and Electronic Communications and Transactions; Wage Reporting for Payments to Incarcerated Individuals; Accelerate Issuance of IRS Form 6166, Certification*

of U.S. Residency; Retaining Different Corporate Addresses for Different Types of Tax; Procedures for Partners that Receive Late Schedule K–1 Filings; Improvements to the Bridge Phase of the CAP; Examination Customer Coordination and Innovation Office; Improving the Taxpayer Experience in Docketed Cases within the Jurisdiction of the Independent Office of Appeals that Arise from Compliance Actions by the IRS' Correspondence Examination to Automated Underreporter Functions as well as Feedback Regarding Examination's efforts to Improve Taxpayer Experience with Respect to those Functions; Series 8038 Form Redesign and Updates; Recommendations for Employee Plan Examination Compliance Approaches; Recommendations for Changes to Group Trust Rules; Recommendations to TEOS Improvements; Recommendations for Effective State Engagement to Promote Employment Tax Compliance; Business Master File (BMF) Transcript Delivery Service (TDS); Artificial Intelligence BOTS for Customer Service; Tax Pro Account Online Features; Form SS–4, EIN Application, Daily Limit per Responsible Party. Last-minute agenda changes may preclude advance notice.

Time permitting, at the end of the meeting, interested persons may make oral statements germane to the Council's work. Persons wishing to make oral statements should contact Ms. Stephanie Burch at *PublicLiaison@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to five minutes in length. In addition, any interested person may file a written statement for consideration by the IRSAC by sending it to *PublicLiaison@irs.gov.*

Dated: October 25, 2022.

John A. Lipold,

Designated Federal Officer, Internal Revenue Service Advisory Council.

[FR Doc. 2022–23959 Filed 11–2–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Emergency Rental Assistance Program (ERA2)

AGENCY: Office of Recovery Programs, Departmental Offices, Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments should be received on or before January 3, 2023 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Haley Adams by emailing *haley.adams@treasury.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: On March 11, 2021, the President signed the American Rescue Plan Act of 2021 (the ''Act'') into law. The Act authorizes the Secretary of the Treasury to disburse $21.55 billion of Emergency Rental Assistance (ERA2) to States, the District of Columbia, U.S. Territories, and certain local governments with more than 200,000 residents (collectively, ''grantees'') to provide financial assistance and housing stability services to eligible households. Beginning on October 1, 2022, eligible ERA2 grantees that have obligated 75% of the ERA2 funds allocated to them may also use their remaining unobligated funds on other affordable rental housing and eviction prevention activities, as defined by the Secretary, serving very low-income families.

Title: Emergency Rental Assistance Program (ERA2).

OMB Control Number: 1505–0270.

Type of Review: Revision of a previously approved collection.

Quarterly Reporting

Description

All ERA2 grantees must submit quarterly reports to Treasury detailing their uses of funds to ensure their compliance with the ERA2 Award Terms, the Act, and other applicable requirements. To collect this information, Treasury developed ERA2 quarterly report forms, the accompanying bulk upload templates, and associated guidance. Grantees are required to submit the quarterly reports electronically via Treasury's portal. The current OMB control number for the ERA2 quarterly report forms will expire on December 30, 2022.

Treasury is requesting OMB's approval of additions to and an extension of the ERA2 quarterly report data collection forms. The proposed additions include new questions necessary to monitor the grantees' uses of ERA2 funds to support affordable rental housing and eviction prevention activities starting on October 1, 2022, as authorized by the Act. The remainder of the report, which has been previously approved by OMB, is unchanged.

All information collected through the quarterly reporting is crucial to Treasury's effective monitoring of the ERA2 grantees' compliance with the requirements of the ERA2 award.

Form: Interim Reports,[1] ERA2 Quarterly Reports, Bulk Upload Template, and Guidance.

Affected Public: States, Territories, and local governments who received ERA2 awards.

Estimated Number of Respondents: 376.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 1,504.

Estimated Time per Response: 30 hours.

Estimated Total Annual Burden Hours: 45,120 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–23941 Filed 11–2–22; 8:45 am]

BILLING CODE 4810–AK–P

[1] Treasury is not currently collecting interim reports but is seeking approval of the documents in the event that they become necessary again in the future. Accordingly, they are not accounted for in the hourly burden calculations.

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notice of meeting.

SUMMARY: The United States Mint announces the Citizens Coinage Advisory Committee (CCAC) teleconference public meeting scheduled for November 15, 2022.

DATES: November 15, 2022 from 10 a.m. to 12 p.m. (EST).

ADDRESSES: This meeting will occur via teleconference. Interested members of the public may dial in to listen to the meeting at (888) 330–1716, Access Code: 1137147.

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

SUPPLEMENTARY INFORMATION:

Subject: Review of the 2022 Annual Report; review and discussion of candidate designs for the Ghost Army Congressional Gold Medal; and other business.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov*.

For Accommodation Request: If you need an accommodation to listen to the CCAC meeting, please contact the Diversity Management and Civil Rights Office by November 7, 2022, at 202–354–7260 or 1–888–646–8369 (TYY).

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–23892 Filed 11–2–22; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 84
Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2022–0430; FRL–8838–01–OAR]

RIN 2060–AV45

Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency is proposing to amend existing regulations to implement certain provisions of the American Innovation and Manufacturing Act, as enacted on December 27, 2020. This rulemaking proposes to establish the methodology for allocating hydrofluorocarbon production and consumption allowances for the calendar years of 2024 through 2028. EPA is also proposing to amend the consumption baseline to reflect updated data and to make other adjustments based on lessons learned from implementation of the hydrofluorocarbon phasedown program thus far, including proposing to: codify the existing approach of how allowances must be expended for import of regulated substances; revise recordkeeping and reporting requirements; and implement other modifications to the existing regulations.

DATES: Comments on this notice of proposed rulemaking must be received on or before December 19, 2022. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best ensured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before December 5, 2022. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on November 8, 2022. If a virtual public hearing is held, it will take place on or before November 18, 2022 and further information will be provided at *https://www.epa.gov/climate-hfcs-reduction.*

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2022–0430, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

You may find the following suggestions helpful for preparing your comments: direct your comments to specific sections of this proposed rulemaking and note where your comments may apply to future separate actions where possible; explain your views as clearly as possible; describe any assumptions that you used; provide any technical information or data you used that support your views; provide specific examples to illustrate your concerns; offer alternatives; and, make sure to submit your comments by the comment period deadline. Please provide any published studies or raw data supporting your position. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*e.g.,* on the web, cloud, or other file sharing system).

EPA recognizes that given the nature of this proposed rulemaking, potentially affected entities may wish to submit Confidential Business Information (CBI) or other confidential information. CBI should not be submitted through *https://www.regulations.gov.* For submission of confidential comments or data, please work with the person listed in the **FOR FURTHER INFORMATION CONTACT** section. For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: John Feather, U.S. Environmental Protection Agency, Stratospheric Protection Division, telephone number: 202–564–1230; or email address: *feather.john@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' ''the Agency,'' or ''our'' is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

ABI—Automated Broker Interface
AES—Automated Export System
AHRI—Air-Conditioning, Heating, and Refrigeration Institute
AIM Act—American Innovation and Manufacturing Act of 2020
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
CAA—Clean Air Act
CBI—Confidential Business Information
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CO_2—Carbon Dioxide
DBA—Doing Business As
e-GGRT—Electronic Greenhouse Gas Reporting Tool
EEI—Electronic Export Information
EPA—U.S. Environmental Protection Agency
EVe—Exchange Value Equivalent
FR—Federal Register
GHG—Greenhouse Gas
GHGRP—Greenhouse Gas Reporting Program
GWP—Global Warming Potential
HAP—Hazardous Air Pollutants
HTS—Harmonized Tariff Schedule
HCFC—Hydrochlorofluorocarbon
HFC—Hydrofluorocarbon
HFO—Hydrofluoroolefin
HTS—Harmonized Tariff Schedule
ICR—Information Collection Request
IEC—International Electrotechnical Commission
IMO—International Maritime Organization
IPCC—Intergovernmental Panel on Climate Change
ISO—International Organization for Standardization
ITN—Internal Transaction Number
JCGM—Joint Committee for Guides in Metrology
LCD—Liquid Carbon Dioxide
$MMTCO_2$ e—Million Metric Tons of Carbon Dioxide Equivalent
MMTEVe—Million Metric Tons of Exchange Value Equivalent
MTEve—Metric Tons of Exchange Value Equivalent
NAAQS—National Ambient Air Quality Standards
NAICS—North American Industry Classification System
NATA—National Air Toxics Assessment
NEI—National Emissions Inventory
ODS—Ozone-Depleting Substances
PRA—Paperwork Reduction Act
RACA—Request for Additional Consumption Allowances
RFA—Regulatory Flexibility Act
RIA—Regulatory Impact Analysis

SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
TRI—Toxics Release Inventory
XPS—Extruded Polystyrene

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I. General Information

A. Does this proposed action apply to me?

You may be potentially affected by this proposal if you produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. Potentially affected categories, North American Industry Classification System (NAICS) codes, and examples of potentially affected entities are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412*	Pharmaceutical Preparation Manufacturing.
325414*	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150*	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413*	Semiconductor and Related Device Manufacturing.
334419**	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212*	Truck Trailer Manufacturing.
336214*	Travel Trailer and Camper Manufacturing.
336411*	Aircraft Manufacturing.
336611*	Ship Building and Repairing.
336612*	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS code	NAICS industry description
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860 *	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.
541714	Research and Technology in Biotechnology (except Nanobiotechnology).[11]
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160 *	Fire Protection.

Codes marked with an asterisk may apply to sectors that receive application-specific allowances under the American Innovation and Manufacturing Act of 2020 (AIM Act).

This table is not intended to be exhaustive, but rather provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this section could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the AIM Act, and what authority does it provide to EPA as it relates to this proposed action?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (42 U.S.C. 7675). The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program; facilitating sector-based transitions to next-generation technologies; and promulgating certain regulations for purposes of maximizing reclamation and minimizing releases of HFCs and their substitutes from equipment. This rulemaking focuses on the first area—the phasedown of the production and consumption of HFCs.

Subsection (e) of the AIM Act gives EPA authority to phase down the production and consumption of listed HFCs through an allowance allocation and trading program. Subsection (c)(1) of the AIM Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute's provisions, referred to as ''regulated substances'' under the Act. Congress also assigned an ''exchange value'' [1] [2] to each regulated substance (along with other chemicals that are used to calculate the baseline). EPA has codified the list of the 18 regulated substances and their exchange values in appendix A to 40 CFR part 84.

The AIM Act requires EPA to phase down the consumption and production of the statutorily listed HFCs on an exchange value-weighted basis according to the schedule in subsection (e)(2)(C) of the AIM Act. The AIM Act requires that the EPA Administrator ensures the annual quantity of all regulated substances produced or consumed [3] in the United States does not exceed the applicable percentage listed for the production or consumption baseline. EPA has codified the phasedown schedule at 40 CFR 84.7.

To implement the directive that the production and consumption of regulated substances in the United States does not exceed the statutory targets, the AIM Act in subsection (e)(3) requires EPA to issue regulations establishing an allowance allocation and trading program to phase down the production and consumption of the listed HFCs. These allowances are limited authorizations for the production or consumption of regulated substances. Subsection (e)(2) of the Act has a general prohibition that no person [4] shall produce or consume a quantity of regulated substances in the United States without a corresponding quantity of allowances.

EPA published a final rule on October 5, 2021 (86 FR 55116; hereinafter called the Framework Rule), that, among other things: established the HFC production and consumption baselines; determined an initial approach to allocating production and consumption allowances for 2022 and 2023, identifying both the entities receiving allowances and how to determine what quantities of allowances they would receive; established a process for issuing ''application-specific'' allowances to entities in six specific applications listed in subsection (e)(4)(B)(iv) of the AIM Act; created a set-aside pool of allowances for new entrants and entities for which the Agency did not have verifiable data prior to the finalization of the rule; established provisions for the transfer of allowances; established recordkeeping and reporting requirements; and established a suite of

[1] EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the global warming potentials (GWPs) included in the Intergovernmental Panel on Climate Change (IPCC) (2007). EPA uses the terms ''global warming potential'' and ''exchange value'' interchangeably in this proposal.

[2] IPCC (2007): Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Berntsen, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt, 2007: Technical Summary. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA *https://www.ipcc.ch/report/ar4/wg1*.

[3] In the context of allocating and expending allowances, EPA interprets the word ''consume'' as the verb form of the defined term ''consumption.'' For example, subsection (e)(2)(A), states the phasedown consumption prohibition as ''no person shall . . . *consume* a quantity of a regulated substance without a corresponding quantity of consumption allowances.'' While a common usage of the word ''consume'' means ''use,'' EPA does not believe that Congress intended for everyone who charges an appliance or fills an aerosol can with an HFC to expend allowances.

[4] Under the Act's term, this general prohibition applies to any ''person.'' Because EPA anticipates that the parties that produce or consume HFCs—and that would thus be subject to the Act's production and consumption controls—are companies or other entities, we frequently use those terms to refer to regulated parties in this proposal. Using this shorthand, however, does not alter the applicability of the Act's or regulation's requirements and prohibitions. Similarly, in certain instances EPA may use these terms interchangeably in this rule preamble, but such differences in terminology should not be viewed to carry a material distinction in how EPA interprets or is planning to apply the requirements discussed herein.

compliance and enforcement-related provisions. Unless otherwise stated in the proposal sections included in this notice, EPA's proposed requirements and revisions are based on the same interpretations of the AIM Act, and the Clean Air Act as applicable under subsection (k) of the AIM Act, as discussed in the Framework Rule. EPA also has inherent authority to prevent and identify noncompliance, to ensure the Agency can meet the statutory directive in subsection (e)(2)(B), and to create a level playing field for the regulated community.

C. What are HFCs?

HFCs are anthropogenic [5] fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. HFCs are potent greenhouse gases (GHGs) with 100-year GWPs (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times that of carbon dioxide (CO_2).

HFC use and emissions,[6] have been growing worldwide due to the global phaseout of ozone-depleting substances (ODS) under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol), and the increasing use of refrigeration and air-conditioning equipment globally. HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. Global adherence to the Kigali Amendment would substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.[7] [8]

Atmospheric observations of most currently measured HFCs confirm their abundances are increasing at accelerating rates. Total emissions of HFCs increased by 23 percent from 2012 to 2016 and the four most abundant HFCs in the atmosphere, in GWP-weighted terms, are HFC–134a, HFC–125, HFC–23, and HFC–143a.[9]

In 2016, HFCs, excluding HFC–23, accounted for a radiative forcing [10] of 0.025 W/m^2: This is a 36 percent increase in total HFC forcing relative to 2012. Under status quo conditions, this radiative forcing was projected to increase by an order of magnitude to 0.25 W/m^2 by 2050.[11] If the Kigali Amendment were to be fully implemented, it would be expected to reduce the future radiative forcing due to HFCs (excluding HFC–23) to 0.13 W/m^2 in 2050 which is a reduction of about 50 percent compared with the radiative forcing projected in the business-as-usual scenario of uncontrolled HFCs.[12]

There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs and have high impacts as measured by the quantity of each substance emitted multiplied by their respective GWPs. These 18 HFCs are all saturated, meaning they have only single bonds between their atoms and therefore have longer atmospheric lifetimes.

In the United States, HFCs are primarily used in refrigeration and air-conditioning equipment in homes, commercial buildings, and industrial operations (approximately 75 percent of total HFC use in 2018) and in air conditioning in vehicles and refrigerated transport (approximately 8 percent). Smaller amounts are used in foam products (approximately 11 percent), aerosols (approximately 4 percent), fire protection systems (approximately 1 percent) and solvents (approximately 1 percent).[13]

More detailed information on HFCs, their uses, and their impacts is available in the Framework Rule and its associated supporting documentation. We also discuss costs and benefits associated with this action in section IX of this preamble, and consider potential environmental justice impacts in section X of this preamble.

II. What is the summary of this proposed action?

EPA proposes to:

- Establish a methodology for issuing production and consumption allowances for calendar years 2024 through 2028; [14]
- Confirm that entities may confer or transfer allowances as soon as allowances are allocated;
- Adjust the consumption baseline to reflect corrected data;
- Codify requirements related to the expenditure of allowances for import;
- Clarify and revise recordkeeping and reporting requirements, including a new requirement to report emissions from HFC production facilities; and
- Implement other revisions.

EPA is also carrying out further analyses in light of these proposed actions, including:

- Estimating incremental changes in costs and benefits of the HFC phasedown from 2024 through 2050 due to the proposal to adjust the consumption baseline and revising an abatement option used in the analysis; and
- Providing further consideration of potential environmental justice impacts, including updating the analysis with more recent data, adding another facility, and providing more demographic detail on potentially affected communities.

[5] While the overwhelming majority of HFC production is intentional, EPA is aware that HFC–23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)-22.

[6] World Meteorological Organization (WMO), *Scientific Assessment of Ozone Depletion: 2018,* World Meteorological Organization, Global Ozone Research and Monitoring Project—Report No. 58, 67 pp., Geneva, Switzerland, 2018. *https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf.*

[7] Ibid.

[8] A recent study estimated that global compliance with the Kigali Amendment is expected to lower 2050 annual emissions by 3.0–4.4 Million Metric Tons of Carbon Dioxide Equivalent ($MMTCO_2e$). Guus J.M. Velders et al. *Projections of hydrofluorocarbon (HFC) emissions and the resulting global warming based on recent trends in observed abundances and current policies.* Atmos. Chem. Phys., 22, 6087–6101, 2022. Available at *https://doi.org/10.5194/acp-22-6087-2022.*

[9] WMO, 2018.

[10] Radiative forcing is expressed in units of watts per square meter (W/m^2) and is defined by the IPCC as ''a measure of the influence a factor has in altering the balance of incoming and outgoing energy in the Earth-atmosphere system and is an index of the importance of the factor as a potential climate change mechanism.'' IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, Pachauri, R.K and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp. *https://www.ipcc.ch/report/ar4/syr/.*

[11] Guus J.M. Velders, David W. Fahey, John S. Daniel, Stephen O. Andersen, Mack McFarland, Future atmospheric abundances and climate forcings from scenarios of global and regional hydrofluorocarbon (HFCs) emissions, Atmospheric Environment, doi:10.1016/j.atmosenv.2015.10.071, 2015.

[12] Ibid.

[13] Calculations based on EPA's Vintaging Model, which estimates the annual chemical emissions from industry sectors that historically used ODS, including refrigeration and air-conditioning, foam blowing agents, solvents, aerosols, and fire suppression. The model uses information on the market size and growth for each end use, as well as a history and projections of the market transition from ODS to alternatives. The model tracks emissions of annual ''vintages'' of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. Additional information on these estimates is available in U.S. EPA, April 2016. EPA Report EPA–430–R–16–002. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014. Available at *https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014.*

[14] In the context of this proposal, ''2024 through 2028'' means ''2024 through, and including, 2028.''

III. How is EPA proposing to determine allowance allocations starting in 2024?

This section provides an overview of EPA's proposal to establish a methodology for issuing calendar year production and consumption allowances starting in calendar year 2024. In the Framework Rule, EPA codified an initial approach to allocating production and consumption allowances for calendar years 2022 and 2023, and did not establish any allocation methodology for further years. This rulemaking proposes an approach to calculating production and consumption allowance allocations for future calendar years, beginning with calendar year 2024 allowances. EPA is proposing that this methodology would apply for calculating production and consumption allowances for calendar years 2024 through 2028.

The Framework Rule established that application-specific allowances would be available to identified entities for calendar years 2022, 2023, 2024, and 2025. EPA is not proposing to change the methodology for issuing application-specific allowances through this rulemaking. The existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Framework Rule.

Subsection (e)(3) of the AIM Act requires EPA to implement the statutorily established phasedown of the production and consumption of regulated substances through an allowance allocation program. Congress established a cap on the number of allowances available each year (by defining how to calculate the baseline and requiring a set percentage reduction in specific years from that baseline) and requires EPA to establish ''an allowance allocation and trading program.''

In the Framework Rule, EPA made clear that the Agency intended to revisit how to allocate production and consumption allowances for 2024 and beyond. EPA presented and took advance comment on ideas on potential criteria and a framework for issuing allowances for 2024 and later years. EPA stated that comments received on the elements noted for advance comment would be taken under advisement by the Agency and incorporated, as appropriate, in future and separate rulemakings with an opportunity for public comment prior to finalization of any provisions. Accordingly, EPA has considered the advance comments provided on potential methodology for allocation methodologies starting with calendar year 2024 allowances in development of this proposal. Those comments can be found at Docket ID No. EPA–HQ–OAR–2021–0044. EPA is not including those comments in the docket for this rule, does not consider those advance comments to be part of this rulemaking record, and does not anticipate providing any further response to them.

A. For which years is EPA proposing to establish the allocation methodology?

EPA is proposing to establish a methodology for allocating production and consumption allowances for calendar year 2024 through 2028. During these five years, the annual production and consumption caps established in the AIM Act are 60 percent of the baseline.[15] EPA is proposing to establish a consistent methodology for the duration of this next phasedown step.

In the phaseout of HCFCs, which EPA is implementing under Title VI of the Clean Air Act, EPA has similarly used an approach of periodically revisiting its allocation methodology and has found that a periodic revisiting of the allowance allocation methodology allowed the Agency to respond to changing market conditions or challenges in program implementation. Examples of changes in market conditions that the Agency could potentially consider in revisiting its methodology in the HFC phasedown include, among other things, companies entering or exiting the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, and/or supply shortages for specific HFCs. EPA is proposing to implement the current methodology through allocation of calendar year 2028 allowances to align the next periodic revisiting of the methodology with the next phasedown step, which occurs in 2029. This allows EPA to consider lessons learned from implementation, prior year use of allowances, and any concerns surrounding distribution of allowances prior to the next reduction in the production and consumption caps. For example, EPA might want to adjust the allocation methodology if certain allowance allocations are not being expended, leading to supply constraints, or if there are concerns of market disruptions tied to the next phasedown step that EPA could alleviate through a change in allocation methodology. Establishing a methodology for these five years, as opposed to a shorter period of time, is intended to provide allowance holders a predictable understanding of a likely range of allocation levels for these five years so they can make longer term decisions and plans about how to deploy their allowances (*e.g.,* whether to transfer or produce or import directly).

While the Agency's primary proposal is to establish an allowance methodology through 2028 and reassess the methodology for allocation of calendar year 2029 production and consumption allowances, EPA is also considering whether it may be less disruptive to the market to reassess and potentially change methodologies in a year prior to or after a phasedown step (*e.g.,* alter the methodology for allocation of calendar year 2028 or 2030 allowances, instead of aligning with the next phasedown step in 2029). EPA is also interested in commenters' input on whether it is appropriate to establish the methodology through a different phasedown step, such as through the allocation of calendar year 2036 allowances when the production and consumption caps reach 15 percent of baseline.

B. What is EPA's proposed framework for determining how many allowances each entity receives?

This section discusses how EPA proposes to determine the quantity of production and consumption allowances each entity would receive. As in the Framework Rule, EPA seeks to provide as seamless a transition as possible as HFCs are phased down, ensure that the methodology is in place before October 1, 2023,[16] and develop a methodology that utilizes robust data. EPA is proposing to use a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate new market entrants [17] that received allowances from EPA on March 31, 2022, pursuant to 40 CFR 84.15(e)(3). EPA is not proposing to establish another pool of set-aside allowances. Nor is EPA proposing any change to the methodology outlined in

[15] In 2029, the production and consumption caps decline to 30 percent of baseline.

[16] Under the AIM Act, by October 1 of each calendar year EPA must calculate and determine the quantity of production and consumption allowances for the following year. EPA intends to issue allowances for the 2024 calendar year no later than October 1, 2023, using the procedure established through this rulemaking.

[17] EPA allocated calendar year 2022 and 2023 consumption allowances to entities that met the criteria of 40 CFR 84.15(c)(2) as part of the initial pool of set-aside allowances. In the context of this proposal, EPA generally refers to these entities as new market entrants. As discussed in this section, EPA is not proposing to establish another pool of set-aside allowances or to extend 40 CFR 84.15(c)(2) to future new market entrants.

40 CFR 84.13 for determining application-specific allowance allocations and accordingly is not reopening that methodology in this rulemaking.[18]

1. Which methodology is EPA proposing to use as the basis for allocations?

EPA is proposing to base production allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of production of regulated substances [19] between 2011 and 2019. EPA is proposing to base consumption allowance allocations on an entity's market share derived from the average of the three highest years (not necessarily consecutive) of consumption of regulated substances between 2011 and 2019.[20] For new market entrants that were allocated allowances in 2022 and 2023, EPA is proposing an approach that would allocate consumption allowances such that they would see an equivalent reduction in allowances between the 2022–2023 and 2024–2028 timeframes as general pool allowance holders. Since new market entrants do not receive allowances based on prior import history between 2011 and 2019, EPA is proposing to create a value that can serve as a stand in for an average of the three highest years of consumption of regulated substances between 2011 and 2019 for each new market entrant.

EPA would determine this based on the number of allowances allocated to each new market entrant in calendar year 2023 (which is identical to the number of allowances allocated for calendar year 2022) and the percent reduction all general pool allowance holders experience in calendar year 2023 relative to the average of their three highest years of consumption. For reference, each general pool allowance holder received allowances at a level 32.1 percent below their individual high three-year average in calendar year 2022. The reduction in calendar 2023 will likely be different, assuming the number of application-specific allowances allocated is different, and will be determined by October 1, 2023. EPA would divide each new market entrant's calendar year 2023 allowance value by the proportion of allowances received by general pool allowance holders relative to their high three-year average in calendar year 2023. For example, if general pool allowance holders receive allowances equivalent to 67.9 percent of their high three-year average identical to calendar year 2022, a new market entrant that received 200,000 MTEVe of allowances in 2023 would be credited with approximately 294,435 MTEVe as the stand in for their high three-year average.

EPA would then add the high three-year average values for historic producers and importers with the stand in values for new market entrants to determine an aggregate total across all eligible allowance holders. This approach is intended to ensure that new market entrants and general pool allowance holders would experience the same proportionate reduction between their 2023 allocation and their 2024 allocation. If any entity qualifies under both the new market entrant and historic producer or importer methodologies, the Agency will allocate with the methodology that issues the greater number of allowances. EPA is proposing that if a company that has prior production and/or import activity during the relevant timeframe acquires a new market entrant, the Agency would add the new market entrant's high three-year average stand-in value to the acquiring entity's high three-year average consumption value and would use this value for future allocation determinations.

After determining entities' market share and eligibility (see section III.C of this preamble), EPA is proposing to then use the same steps as described in the Framework Rule (86 FR 55147) and codified at 40 CFR 84.9(a)(2)–(4) and 40 CFR 84.11(a)(2)–(4) that currently apply for purposes of allocations for calendar years 2022 and 2023. Independently for production and consumption allowances, EPA would add every entity's average to determine a percentage market share of production and consumption allowances, respectively, for each entity. EPA would multiply each entity's percentage market share by the total amount of general pool calendar-year allowances available to determine each entity's production or consumption allocation.

EPA is proposing to continue using historic production and consumption data from 2011 to 2019, matching the approach taken for allocating calendar year 2022 and 2023 allowances, for many of the reasons described in the Framework Rule (86 FR 55145–55147). Among these reasons is that a broad range of years such as 2011–2019 accounts for changes in market behavior (*e.g.,* actively commercializing alternatives to high-GWP HFCs) that took place earlier in the transition as a result of the global agreement to the Kigali Amendment or other countries enacting HFC phasedown regulations.

Beyond the rationales detailed in the Framework Rule, EPA is proposing to continue to use 2011–2019 data for additional reasons. First, using the same timeframe as finalized in the Framework Rule would minimize disruption to the market in 2024. EPA is seeking to provide a smooth transition from HFCs through the next phasedown step. Over the past year, allowance holders and their supply chains have been adjusting to the HFC Allocation Program, and more specifically, entity-specific allocation levels. Continuing to use the same set of years reduces the disruption to the market. This is especially valuable since reducing U.S. production and import from 90 percent of baseline to 60 percent of baseline will result in other changes to business practices, such as the increased use and changes in production or import of alternatives and reclaimed HFCs. Using the same methodology would provide continuity between the 2022 to 2023 timeframe and the 2024 to 2028 timeframe, and would allow producers and importers to estimate their anticipated allocation and plan accordingly. Since EPA has already gone through the process of identifying entities' high three years of historic data, averaged those, and calculated respective market shares, entities have more specific insight on what proportion of available production and/or consumption allowances they would be allocated if EPA continued with the same methodology, although EPA does anticipate some entity-specific revisions due to corrected historic data. In comments received on the Framework Rule, EPA heard from regulated entities that they have long planning horizons and would prefer allowances be allocated consistently for as long as possible. Establishing a methodology for five years that continues forward an approach that is similar to the one used for the calendar year 2022 and 2023 allocation provides a longer-term planning horizon for HFC producers and importers. This will help enable entities to make decisions about which HFCs, and HFC alternatives, to produce

[18] As noted previously, the existing methodology in 40 CFR 84.13 makes application-specific allowances available to identified entities for calendar years 2022, 2023, 2024, and 2025. The existing application-specific allowance allocation methodology codified at 40 CFR 84.13 will continue to apply as finalized in the Framework Rule. EPA will consider any comments on this methodology outside the scope of this rulemaking.

[19] The Agency is not, at this time, proposing to designate any new regulated substances under subsection (c)(3), just as the Agency did not designate any new regulated substances under subsection (c)(3) in the Framework Rule (Response to Comments on the Framework Rule at page 193).

[20] If a company did not have three years of data, EPA took the average of the years between 2011 and 2019 for which the company produced or imported HFCs, assuming the company was active in 2020 or applied for and received special consideration (86 FR 55146).

and import as the market transitions away from high exchange value equivalent (EVe) regulated substances. Second, EPA has conducted multiple rounds of outreach and review and most entities have reviewed and corrected their data, if needed. EPA has reviewed 2011–2019 data against information available through other systems, such as import paperwork filed with U.S. Customs and Border Protection (CBP), and conducted outreach where significant inconsistencies were identified. If a significant inconsistency was identified, EPA requested entities correct the data or provide source materials to verify previously provided figures. As such, the 2011–2019 dataset is well understood and has received more review than any other set of years. Further, after implementing this approach through the Framework Rule, EPA has not identified any reasons that merit significantly changing course at this time, especially given the regulated community has recently adjusted to this new allocation program.

Since the Agency is proposing to look at entity-specific data from such a wide range of years, EPA is proposing to average an entity's three highest years of data (not necessarily consecutive), as opposed to going with a single high year. Taking an average of multiple years minimizes the effect of market fluctuations and mitigates the possibility of an entity receiving a large share of allocations based on a single very high year. Using an average of the three highest years during the 2011–2019 period incorporates consideration of both industry history and ongoing growth and market change. EPA recognizes that there is no single year that is ''better'' for all market participants. There is no year in which a forward-looking entity may not have been stockpiling in preparation for a restriction on HFCs or new duties that were imposed by the Department of Commerce. Though countries agreed to the Kigali Amendment in 2016, efforts to amend the Montreal Protocol took the better part of a decade. As such, taking an average of a wider range of years is more equitable to all entities in the market. Each entity receives its ''best'' years regardless of actions taken by other entities.

To determine entity-specific consumption data and an entity's three highest years, EPA intends to rely on production, import, export, destruction, and transformation data reported to the Greenhouse Gas Reporting Program (GHGRP),[21] which parallels the approach taken in the Framework Rule and in the Agency's allocation of calendar year 2022 general pool allowances. EPA acknowledges that the definition of ''importer'' under GHGRP could apply to multiple entities, such that more than one entity could be considered an ''importer'' for purposes of GHGRP. As a result, entities could have played varying roles in the import activity, but still been appropriately considered an ''importer'' under GHGRP definitions. Importantly, the GHGRP definition of importer is substantially similar to the definition of importer in the 40 CFR part 84 regulations.[22]

It is critical to develop an approach to allocation that helps ensure that only one entity receives credit as the ''entity that imported'' particular HFCs. For example, if both a consignee and an importer of record received credit for the same historically imported HFCs, this would double-allocate allowances for that single shipment. This double-allocation would distort the allowance system such that it was not a best available reflection of historic patterns. For purposes of determining historic import levels, EPA intends to rely on the entity that has historically reported the imports for a shipment. If two or more entities report the same import to GHGRP, EPA would include that import in the allowance allocation calculation of the entity that first reported the import to GHGRP. EPA considers historic reporting to GHGRP as indicative of the entity that took primary responsibility for complying with EPA requirements for that import and considers this a critical data point to determining who to credit that import to. EPA is concerned that entities who took limited if any responsibility for the import, including complying with EPA reporting requirements, may attempt to claim that they are in fact the importer now that EPA has begun implementing the AIM Act.

EPA is also considering whether to include more recent data in determining allocation levels given that more recent data may be a more accurate reflection of the current state of the HFC production and import market. EPA requests comment on whether to expand the range of years to use to develop each allowance holder's high three-year average to include 2020 and 2021. EPA has not included these years in its primary proposal because the Agency recognizes that production and importation of HFCs in 2020 and 2021 were likely influenced by external factors such as the COVID–19 pandemic, and supply chain disruptions. In addition, EPA is concerned that data from 2020 and 2021 could be distorted due to an entity's awareness that the AIM Act may be, or had been, passed. Data from 2021, in particular, may be skewed given the likelihood of stockpiling in advance of the Framework Rule becoming effective and the associated restrictions on production and import of regulated substances that began on January 1, 2022. Expanding the range of years could also significantly change each entity's market share, which could disrupt the market and negatively affect ongoing adjustments to the HFC Allocation Program that have taken place in 2022 and 2023. Further, EPA is unaware of any environmental benefit associated with changing the years used to determine allowance allocations. For the reasons described, EPA's primary proposal is to not use 2020 and 2021 data to determine entity-specific allocation amounts. However, EPA requests comment on whether there are advantages and disadvantages of including 2020 and 2021 data, and if so, what those would be.

EPA is proposing to include data that dates as far back as 2011 because of potential concerns that data from more recent years, particularly 2017–2021, could reflect attempts at market manipulation, stockpiling, or other system gaming by some entities that were aware of agreement of the Kigali Amendment to the Montreal Protocol on October 15, 2016, and/or development and consideration of the AIM Act by Congress. By using only later years of data, and not data from the earlier timeline, EPA could potentially unfairly give additional weight to entities that had inflated numbers due to attempts at artificial market positioning or stockpiling behavior ahead of the HFC phasedown.

EPA also considered using a rolling set of years, such as allocating based on entities' prior three years of production or consumption data, but decided against proposing this as an option. Using a rolling average based on the most recent production or consumption data would allow allocations for additional new entrants beyond entities that are allocated allowances based on historic production and import and as new market entrants from the set-aside pool. Under EPA's Framework Rule, 40

[21] The GHGRP requires various facilities and suppliers to annually report data related to GHGs to EPA (see 40 CFR part 98). Subpart OO, ''Suppliers of Industrial Greenhouse Gases,'' is the section relevant to reporting on HFC production and consumption. Because the HFCs listed as regulated substances under the AIM Act are industrial GHGs, EPA has collected data relevant to HFC production and consumption as defined under the AIM Act. Further discussion of the GHGRP can be found in the notices and dockets related to the Framework Rule.

[22] Compare 40 CFR 98.6 to 40 CFR 84.3.

CFR 84.15, and our primary proposal in this rule, any entity that did not receive allowances as a new market entrant to import going forward or that lacked production or import history from 2011–2019, would have to purchase allowances from an entity willing to engage in a transfer. As currently established, each transfer is a one-off transaction that only applies to the year of the transfer. Unless an entity acquires a different entity that holds allowances outright and receives a regular allocation, this approach does not allow for an entity to secure allowances for the duration of the allocation period. However, there are many advantages of using a stable set of past years instead of using more recent data, especially data from after the start of the HFC Allocation Program. Many stakeholders have expressed concerns that if EPA were to base allocations on production and import volumes in 2022 and later years, entities that transferred their allowances would effectively reduce their market share and receive fewer allowances in a future allocation. Likewise, entities that receive allowances through an inter-company transfer would be gaining market share that could increase their future allocation. In the proposal prior to the finalized Framework Rule (86 FR 27203, May 19, 2021), EPA sought advance input on what approaches to consider for 2024 and later years, indicating that the methodology used to determine allowance allocations for calendar years 2022 and 2023 may not be used for the 2024 allocation. Uncertainty about whether EPA may decide to allocate future allowances on the basis of data from a rolling set of years rather than from a fixed historical period may have contributed to reluctance from some allowance holders to engage in transfers. This uncertainty would be resolved over the intermediate future if EPA finalizes the approach of continuing to use historic production and consumption data to determine allowance allocations for calendar years 2024 through 2028. Transfers are important for an efficiently functioning market and ensuring the opportunity for full utilization of allowances. Basing allowance allocations on data from a rolling set of years during this timeframe could promote uncertainty among allowance holders and inhibit the efficient transfer of allowances. EPA is concerned about finalizing an allocation methodology that would disincentivize transfers unless there were other compelling reasons to argue for such a methodology and is therefore not proposing to use a rolling set of years to determine entity-specific allocation amounts for the 2024 through 2028 allocations.

2. What other allocation methodologies did EPA consider?

As indicated in the proposal to the Framework Rule (86 FR 27150), including in the section seeking advance comment to inform future rulemakings, EPA has been considering other ways to undertake allowance allocation beyond allocating allowances to entities based on historic production and import activity at no cost (86 FR 27203). In considering different allocation mechanisms, EPA considered multiple factors, including ease of implementation for both the regulated community and the U.S. government; consistency with the AIM Act; facilitating an efficient market, such as by collecting and releasing data on production, import, and inventories of HFCs; transparency and certainty for regulated entities and the public; distributional effects, such as on new entrants; responsiveness to changing market conditions (*e.g.,* companies entering or existing the market, corporate mergers and acquisitions, significant quantities of allowances unexpended at the end of the year, or supply shortages or market disruptions for specific HFCs); small business implications; minimizing the opportunity for fraud; and other factors.

In developing this proposed rulemaking, the Agency considered charging a fee for allowances or establishing a system to auction allowances. These approaches have advantages, including returning value to taxpayers and setting a visible price signal, which could provide useful price information for the public and for market participants. A fee or auction would be aimed at further incentivizing the highest economically valued use due to the upfront expenditures needed for all entities seeking allowances to produce and import HFCs. There is extensive literature discussing the conditions where auctions may be more suitable than other allocation methods.[23] The academic literature indicates that auctions may have potential advantages in addressing challenges such as new entrants, ensuring efficient and equitable allocations as market conditions change, and encouraging competition and innovation.[24] Both EPA, and the federal government overall (for example, the Federal Communication Commissions' spectrum auctions and the U.S. Treasury Department's sealed pay as bid and uniform bid auctions on debt of various maturities), have experience administering auctions of various formats.

However, EPA also anticipates challenges with establishing a potential fee-based or auction system and is not proposing to use these methods of allocation in this proposed rulemaking. EPA and regulated entities have experience implementing the allocation methodology set for the calendar years of 2022 and 2023, which is similar to the system that many entities also participated in for the phaseout of ODS under Title VI of the Clean Air Act (CAA).[25] Creating and administering a different system would result in additional burden on EPA and uncertainty for those involved in the early stages of the HFC phasedown. EPA is also concerned that smaller entities with less available capital may not be able to bear the initial costs of purchasing allowances either through a fee system or through an auction. EPA would also need to consider what safeguards would be appropriate to deter or prevent efforts by well-capitalized entities, particularly in an auction system, to artificially corner a portion of the HFC market for their overall business gains.

For these reasons, EPA is not proposing to establish a fee-based or auction system to allocate allowances in this proposed rule. These considerations may change as the phasedown proceeds. EPA recognizes that the market may face scarcity as HFC production and consumption is phased down, and we may also see allowances unused as new alternatives not subject to allocations replace HFCs. The use of an EV-weighted system rather than chemical-by-chemical allocation in part addresses these different market forces by providing flexibility about which HFCs are produced and imported. EPA intends to consider all relevant information when developing future rulemaking. To facilitate our continued

[23] See, *e.g.,* Administrative Conference of the United States, Recommendation 2017–4: Marketable Permits (2017), *https://www.acus.gov/sites/default/files/documents/Recommendation%202017-4%20%28Marketable%20Permits%29.pdf* (citing relevant literature, including the consultant's report, which further summarizes the literature, available at *https://www.acus.gov/sites/default/files/documents/Marketable%20Permits%20Report-final.pdf*).

[24] The 2017 review conducted by the Administrative Conference of the United States also notes that ''even when an agency has statutory discretion to use [an auction] program, such a program may not be the most suitable regulatory tool to achieve an agency's goal.'' See *https://www.acus.gov/sites/default/files/documents/Recommendation%202017-4%20%28Marketable%20Permits%29.pdf.*

[25] A key difference between the phaseout of ODS and this program is that consumption and production of HFCs will not be phased out entirely.

consideration, separate and apart from this current rulemaking, EPA invites advance comments on whether there are any current or potential future disadvantages with the currently proposed allocation system that could be addressed by an alternate allocation mechanism, as well as comments on design features or timing options for alternate allocation mechanisms that EPA could consider were the Agency to determine at a future point that changes are warranted.

3. What did EPA consider in developing its proposal as to the appropriate entities to be allocated allowances?

As outlined in section III.B.1 of this preamble, EPA is proposing to use a similar methodology to calculate allocation quantities as the initial framework used for allocating calendar year 2022 and 2023 production and consumption allowances, with adjustments to accommodate new market entrants that received allowances from EPA on March 31, 2022. In developing this proposed approach, EPA has considered whether to allocate production and consumption allowances to entities beyond those that have historic production and import data.

As part of this deliberation, EPA has considered whether allowance allocations can be used to incentivize certain behavior such as to maximize reclamation and minimize releases of regulated substances. Some commenters to the Framework Rule encouraged EPA to issue allowances to reclaimers. The result of this suggestion could be that reclaimers have allowances available to directly import virgin regulated substances that they could use to rebalance refrigerant blends that are slightly off specification after reprocessing recovered refrigerant. The allowances could be transferred to another entity to import or produce on the reclaimer's behalf, or could be used to ease a reclaimer's ability to purchase regulated substances from another entity. This could be an indirect way to foster the development of HFC reclamation operations. However, EPA notes that reclaimers that have historically directly imported were included in the Framework Rule methodology and would be included under the primary proposed methodology for this rule. EPA notes as well that several reclaimers applied for, and received, new market entrant allowances from the set-aside pool for calendar years 2022 and 2023. EPA does not view issuing allowances to reclaimers that are not eligible based on the methodology EPA is proposing to use for 2024 through 2028 (*i.e.,* similar to the methodology used for 2022 and 2023 including the additional allowances issued to new market entrants) as a meaningful way to increase opportunities for reclamation and recognizes that by doing so, EPA would reduce the number of allowances available to other market participants including other reclaimers. Moreover, EPA is exploring options to promote reclamation under other sections of the AIM act (*e.g.,* under subsection (h) Management of regulated substances). Further, the phasedown of HFCs increases opportunities for use of reclaimed HFCs by restricting the amount of newly produced and imported HFCs that can enter U.S. commerce.

As noted previously in this section, EPA is not proposing to establish a set-aside pool of allowances for calendar years 2024 through 2028. In the Framework Rule, EPA created a set-aside pool of allowances to be allocated no later than March 31, 2022. The prior set-aside pool was created for three types of entities: application-specific allowance holders, historic importers that were under the GHGRP reporting threshold and did not receive general pool allowances, and new market entrants. The first two categories were created for entities that may not have known of or fully understood the regulatory system created in the Framework Rule given that the Agency undertook the rulemaking in 270 days at Congress's direction and was implementing a program under a new statute. This concern is no longer applicable. Under 40 CFR part 84, entities are required to expend allowances for import and production of regulated substances as of January 1, 2022; therefore, EPA anticipates that entities active in the HFC market are now well aware of EPA's HFC phasedown program. The third group eligible for set-aside allowances was new market entrants. EPA determined in the Framework Rule it was appropriate to exercise its discretion to create a small set-aside pool of allowances for entities looking to enter the HFC import market. It was appropriate to consider this as a one-time opportunity at the initiation of the HFC phasedown program. EPA is not privy to individual entities' decisions on whether to apply for new market entrant allowances, but entities were provided notice of the opportunity and many applied. While the number of consumption allowance holders doubled from the initial allocation with the addition of the eligible new market entrants, these new entrants hold a small percentage of the overall number of allowances issued. EPA recognizes that the goal of the AIM Act is to establish a national phase down of HFC production and consumption by 85 percent by 2036, and therefore, while the Agency did offer this one-time opportunity, EPA does not view further allocations for a set-aside pool and/or allowances for entities who have not previously produced and imported HFCs as supporting the AIM Act's objectives.

C. How is EPA accounting for past production or import activity to determine allocation eligibility?

In order to be eligible to receive general pool allowances for 2024 through 2028 based on historic production and import activity (*i.e.,* for entities that produced and imported regulated substances in 2011 through 2019), EPA is proposing that an entity must have produced (for production and consumption allowances) or imported (for entities only receiving consumption allowances) HFCs in 2021 or 2022. EPA had a similar requirement in the Framework Rule, specifically requiring production or import in 2020.[26] This additional eligibility requirement, that an entity has demonstrated import or production activity in recent years, is intended to exclude entities from receiving allocations that are no longer undertaking the activities for which allowances are required. EPA is interested in avoiding allocating to entities that had historic import or production data in the 2011–2019 timeframe, and have since ceased operations or transitioned away from HFC production or import. Allocating allowances to entities that cannot or will not use them could be disruptive to the market during the phasedown if allowances go unexpended or could result in windfall profits to an entity that will only use the allowances to transfer for a price. The practical effect of not allocating allowances to an entity due to their inactivity would be a pro rata increase of allocation levels to other entities receiving allowances from the general pool allocation.

Relying on information from 2021 or 2022 would incorporate more recent activity than was used for the calendar year 2022 and 2023 allocations, which required production or import in 2020,

[26] EPA also allowed for an entity to identify individual circumstances for not importing in that year due to the COVID–19 pandemic, which is no longer applicable. EPA is not proposing a mechanism to allow an entity to request unique consideration if they did not produce or import in 2021 or 2022.

or for purposes of allocating consumption allowances, an entity to identify individual circumstances for not importing or producing in 2020, given that it was an unusual year due to the COVID–19 pandemic. Allowing two years, as opposed to a single year, provides additional time to demonstrate activity in the market, and is intended to reduce the impacts of supply chain delays, temporary changes in demand, or other business decisions. Some entities also import small volumes of HFCs and may not need to import every year. EPA is proposing to use a fixed set of years (*i.e.,* 2021 and 2022) to determine eligibility for entities to be allocated allowances for calendar years 2024 through 2028 to provide a degree of clarity and certainty to entities during this period in order to minimize disruption to existing supply chains that have adjusted to the 2022 and 2023 allowance allocations. If this approach is finalized as proposed, all market participants will be able to generally understand their own and other allowance holders' market share for the 2024 through 2028 period as of October 1, 2023, because there would not generally be shifts in how many entities EPA is allocating allowances to and the relative share of allowances going to those entities. EPA considered proposing to use a rolling set of years to confirm activity, but using a rolling set of years would not provide the same stability since allowance holders could come into and out of the allocation system, hereby affecting everyone's relative share of available allowances. EPA also does not want to incentivize entities in each subsequent rolling set of years' entities to continue importing or producing small quantities that would otherwise be outside the entity's plans in future years just to maintain position to receive future calendar year HFC allowances. Looking to behavior in 2021 or 2022 would also have administrative benefits to EPA. For example, determining annual allocations would be more streamlined because EPA would be relying on data that has been vetted and reviewed at a single point in time that is in advance of the calendar year 2024 allocation as well as all allocations through calendar year 2028.

EPA's primary proposal is to not apply this eligibility criteria for new market entrants, and instead allocate allowances to all new market entrants as described in section III.B.1 of this preamble, but EPA is considering and taking comment on whether EPA should require that new market entrants import in 2022 to be eligible for allocation of allowances for calendar years 2024 through 2028. Most new market entrants are, as their name suggests, new to the HFC import market and would not reasonably be expected to have any import activity in 2021. Therefore, if the Agency applies eligibility criteria to new market entrants at all, it seems reasonable to look to 2022 for import activity. Accordingly, for these entities, EPA would not be able to look across two years for import for most new market entrants, unlike for general pool participants. EPA anticipates that most new market entrants would make use of allocated allowances and import regulated substances in 2022, so it may be reasonable to look for this action to determine whether the new entrants did in fact enter the market and if they should maintain future eligibility. On the other hand, EPA previously recognized that new market entrants might have difficulty operationalizing their business to begin importing regulated substances in 2022 if the entity was fully new to this aspect of the import business. As a result, in the Framework Rule the Agency took the position that EPA would ''not reduc[e] allowances to new market entrants in 2023 for failing to use all the allowances issued in 2022,'' (86 FR 55159).

If the approach to determining eligibility for general pool allowances from 2024 through 2028 is finalized as proposed, for purposes of determining whether an entity imported or produced regulated substances in 2021, the Agency intends to rely on data that have been reported to EPA under the GHGRP.[27] Entities who imported HFCs in quantities below the GHGRP reporting threshold (*i.e.,* 25,000 $MTCO_2e$ for the year) who wish to be considered for allowances, should report their import and export activity data through the electronic Greenhouse Gas Reporting Tool (e-GGRT) no later than the close of the comment period on December 19, 2022. EPA will not consider data submitted after this date for purposes of issuing allowances under the AIM Act for 2024 and later years. For purposes of determining whether an entity imported or produced regulated substances in 2022, EPA intends to rely on data that have been reported pursuant to the 40 CFR part 84 requirements. EPA intends to rely on data reported no later than February 14, 2023, which aligns with the reporting deadline for fourth quarter calendar year 2022 HFC reports under the HFC allocation requirements at 40 CFR part 84, subpart A.[28] Further, EPA is proposing that in cases where allowances were not expended at the time of production and/or import of HFCs in 2022, that production and import would not count as activity in 2022 for eligibility purposes. In other words, for 2022, EPA would only consider production and import of HFCs where allowances were expended as required when determining whether an entity is eligible for allowances. EPA has established a GHGRP Help Desk to assist potential reporters with issues related to registering and electronic reporting. The hotline can be reached at *GHGreporting@epa.gov* or 1–877–444–1188 (toll free).

Alternatively, EPA is taking comment on simply basing allocations on historic reported data between 2011 and 2019, without including an additional eligibility requirement relating to whether the entity produced or imported HFCs in recent years, such as 2021 or 2022. As noted previously, EPA is concerned that this approach would result in allocating to entities that are no longer in the HFC production or import business, and may no longer be in business at all.

D. Can allowances be transferred or conferred prior to the calendar year?

EPA is proposing to clarify that entities may confer or transfer allowances at any point after they are allocated until the allowance expires at the end of the calendar year for which it was allocated. Allowances can only be expended to cover imports or production in the calendar year for which they are allocated, but entities can confer or transfer allowances before January 1 of the calendar year. 40 CFR 84.5(d) provides that all production, consumption, and application-specific allowances are valid only for the calendar year for which they are allocated (*i.e.,* January 1 through December 31). The intent of this provision was to state that allowances could only be expended in the calendar year for which they were issued. However, use of the term ''valid'' could be read as ambiguous with regard to whether it allows for transfers and conferrals before the calendar year. EPA is proposing to amend this prohibition to more clearly state that entities may transfer and confer their allowances upon their allocation, including ahead

[27] In the limited situations where data on certain HFCs are not required to or cannot be reported to the GHGRP, *e.g.,* production of HFC–23 that is created during production of HCFC–22, EPA would continue to rely on verified submissions from entities no later than the close of the comment period on December 19, 2022.

[28] For more information, visit *https://www.epa.gov/climate-hfcs-reduction/hfc-allocation-rule-reporting-and-recordkeeping.*

of January 1 of the calendar year for which the allowances were allocated.

The Agency hopes that this added clarity would facilitate allowance holders' planning for that upcoming year. EPA encourages allowance holders to undertake transfers and conferrals early in the year and, where possible, well in advance of when regulated substances would need to be produced or imported. Under the existing 40 CFR part 84 regulations, the entity that is producing or importing the regulated substances must have the allowances in their possession as required (see section V.A of this preamble) and at the time that allowances are required to be expended.

IV. How is EPA proposing to update the consumption baseline?

This section explains how EPA determined the consumption baseline in the Framework Rule, how it proposes to update the baseline, and how it plans to further update associated data. Subsection (e)(1) of the AIM Act directs EPA to establish a production baseline and a consumption baseline and provides the equations for doing so. In the Framework Rule, EPA calculated and codified the production and consumption baselines according to the formulas outlined in subsection (e)(1) of the AIM Act. After EPA finalized these baselines, a company informed EPA that they had misreported data previously reported to EPA that factors into the consumption baseline. EPA is now proposing to update the consumption baseline and associated phasedown schedule with this corrected dataset. Separate and in parallel to this action, EPA is also providing a final opportunity for entities to revise their HFC data from 2011 through 2021 for purposes of issuing allowances under the AIM Act.

A. How did EPA determine the consumption baseline in the Framework Rule?

The AIM Act instructs EPA to calculate the consumption baseline by, among other things, using the average annual quantity of all regulated substances consumed in the United States from January 1, 2011, through December 31, 2013. EPA used multiple sources of data to calculate HFC consumption figures for 2011 through 2013: (1) Data reported to EPA's GHGRP; (2) data received in response to the notice of data availability published February 11, 2021 (86 FR 9059); (3) data from the Automated Commercial Environment (ACE) and confirmed through letters sent out under CAA section 114 (EPA ICR 2685.01); and (4) data received in response to the notice of proposed rulemaking for the Framework Rule by the comment due date. Through these sources, EPA received new or revised production, import, export, and destruction data, all of which affected the final baseline values. Based on the data reviewed and collected through these robust efforts, EPA codified the final consumption baseline as 303,887,017 Metric Tons of Exchange Value Equivalent (MTEVe) (40 CFR 84.7(b)(2)). A complete description of EPA's process in developing the codified baseline figure can be found in the Framework Rule at 86 FR 55137—55142.

In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline. In the Framework Rule, EPA codified this phasedown schedule at 40 CFR 84.7(a). EPA also codified the total production and consumption in MTEVe for regulated substances in the United States in each year by multiplying the finalized production and consumption baselines by the percentages of the phasedown schedule. EPA codified total production and consumption allowance quantities that could be allocated at 40 CFR 84.7(b)(3).

B. How is EPA proposing to adjust the consumption baseline?

After EPA finalized the Framework Rule, one company informed EPA that the 2011 and 2012 HFC import data that it had reported to the GHGRP and certified per 40 CFR 98.4(e)(1) as true, accurate, and complete under penalty of law, was, in fact, significantly more than its actual import quantities. Because EPA used the company's 2011 and 2012 HFC import data in the calculation of the consumption baseline, the Agency's calculated and codified consumption baseline was high. The company has since submitted and certified revised reports. EPA has verified the amended data by reviewing the importer's invoices and comparing the reported data to import data provided by CBP. EPA is proposing to update the codified consumption baseline with the corrected data. Specifically, EPA is proposing to revise the consumption baseline from 303,887,017 MTEVe to 300,257,386 MTEVe, which is a decrease of 3,629,631 MTEVe to account for this error. Because the erroneous data related only to imports, the Agency's previously calculated production baseline is not affected and EPA is not proposing to reopen the production baseline in this rulemaking. There are only nine known HFC production facilities and given EPA's experience with these reporters, the Agency does not expect that there are material errors in their data submissions from the 2011–2013 timeframe.

The proposed revision of the baseline amounts to about a one percent change in the baseline. This is not an insignificant difference, but once EPA applies the relevant phasedown step to the baseline and then allocates the resulting allowances among eligible recipients, the change in baseline is expected to have a small effect on individual entities' allocations. Further, this revised baseline, if finalized, would start affecting allowance allocations for calendar year 2024. Because of the prior framing of EPA's regulations, specifically the fact that there was no prior allocation methodology that would apply to calendar year 2024 allowances and beyond, no entities should have had a realistic expectation of allowance allocation levels. Therefore, EPA expects that this alteration of baseline would not affect the regulated communities' reasonable reliance interests.

As outlined in section IV.C of this preamble, EPA is going through a process under the AIM Act to provide a final opportunity for entities to confirm, and if necessary correct, the data available to EPA on those entities' historic consumption activities to inform future allocation calculations. Should other entities identify misreporting in 2011 through 2013 through that process, and sufficiently certify and verify the corrected numbers to EPA, the Agency would include those revised figures in the proposed revision to the consumption baseline in addition to the revision outlined in the prior paragraph.

Data that are submitted under the GHGRP in e-GGRT already have undergone a variety of verification checks during and after report submission. Facilities are sent messages about potential errors in their report; they can either reply with an explanation of the unusual values, or they can resubmit their report to correct any errors and certify the accuracy of the submission. EPA may also request copies of bills of lading, invoices, or CBP entry forms in order to verify reports.

In 2021 in order to verify accurate data for calculation of the AIM Act baseline and allocation of allowances, EPA compared import data submitted to GHGRP to import data from CBP as an additional form of verification. If the sum of metric tons of HFCs reported to e-GGRT diverged significantly from the sum of metric tons of imports under HFC-related Harmonized Tariff Schedule (HTS) codes in CBP records,

these submissions were flagged for possible issues. The Agency generally contacted each facility that was flagged requesting that they either:

- Provide documentation (*e.g.,* bills of lading, invoices, and/or CBP Entry Forms substantiating their imports), or
- Resubmit their report to GHGRP to correct potential errors that would account for why the reported GHGRP data did not more closely align with data reported to CBP.

EPA staff reviewed resubmitted reports and supporting documentation. Any issues found in the documentation review resulted in additional messages sent to the facility to verify reported data. Additional steps taken to verify the data include quality assurance reviews by EPA staff and steps to confirm corporate or common ownership of reporting entities for each allowance holder.

Revising the consumption baseline would change the total consumption cap in MTEVe for regulated substances in the United States in each year after the revision takes effect. In subsection (e)(2)(C) of the AIM Act, Congress provided the HFC phasedown schedule measured as a percentage of the baseline, which EPA codified at 40 CFR 84.7(a). EPA also codified the total production and consumption in MTEVe for regulated substances in the United States in each year by multiplying the finalized production and consumption baselines by the percentages of the phasedown schedule. Therefore, EPA proposes to revise the table of production and consumption limits at 40 CFR 84.7(b)(3) by replacing the current values in Table 2, column 3 of this preamble with the values in column 4.

TABLE 2—REVISED LIMIT OF TOTAL PRODUCTION AND CONSUMPTION ALLOWANCES

Year	Total production (MTEVe)	Previously codified total consumption (MTEVe)	Proposed revised total consumption (MTEVe)
2024–2028	229,532,771	182,332,210	180,154,432
2029–2033	114,766,386	91,166,105	90,077,216
2034–2035	76,510,924	60,777,403	60,051,477
2036 and thereafter	57,383,193	45,583,053	45,038,608

For additional context and transparency, we note that separate from this rulemaking process, EPA has recalculated the number of allowances that should have been allocated to the company that had reported erroneous data. EPA took administrative consequences to retire portions of that company's allocated calendar year 2022 and 2023 consumption allowances equal to the difference between the allocation level based on the updated historical import data and what was previously calculated by the Agency based on misreported data.

C. What other opportunities is EPA providing to further update data?

Separate from this action, EPA is providing a final opportunity for entities to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021 for purposes of the AIM Act. EPA sent an electronic communication or letter to all entities that were known, or likely, to have had consumption activity of regulated substances from 2011 through 2021 that they had until September 26, 2022, to verify, and if necessary correct, the data available to EPA on those entities' historic consumption activities from 2011 through 2021.[29] EPA is providing this final opportunity to entities to make any corrections to historic data; after this point, EPA does not intend to consider any data revisions in allocation decisions.[30]

If there is any entity that did not receive a letter or electronic communication from EPA that had consumption activity of regulated substances from 2011 through 2021, EPA is hereby providing notice that for the purposes of future HFC allowance allocations under the AIM Act, EPA will not consider any data unless submitted to EPA through e-GGRT by the close of the comment period on December 19, 2022. To allow EPA to verify the reported data in a timely manner, anyone reporting past consumption data for the first time must provide transactional records (*e.g.,* bills of lading, invoices, or CBP entry forms). Failure to provide EPA with sufficient documentation at the time of submission to verify these reports may prevent EPA from considering the data in allowance allocations.

This final opportunity for AIM Act purposes would help ensure that allowance allocations are based on the most accurate data available. EPA notes that entities may be referred to EPA's enforcement office for potential reporting violations under the CAA and EPA may issue administrative consequences to adjust 2022 and/or 2023 allowances where appropriate.

V. How is EPA proposing to revise requirements related to allowances for import?

EPA is proposing to make amendments that codify our existing practice for determining which calendar year allowances must be expended for an import as well as who can expend allowances. Additionally, EPA is proposing to specify the requirements for the importation of heels[31] when the precise quantity remaining is uncertain. EPA is making these proposals based on the experience gained in implementing the HFC phasedown program to date under the existing 40 CFR part 84 regulations and establishing a system for consistent implementation and enforcement.

[29] This request was for purposes of implementing the AIM Act. Nothing in this letter or in the complementary process described below relieves any entity of obligations under the GHGRP regulations codified in 40 CFR part 98.

[30] These revisions would be taken into account when determining the annual allocation issued by October 1 of each year for 2024 and future year allocations. If information reveals an entity has provided false, inaccurate, or misleading information, EPA reserves the right to issue administrative consequences to adjust allowances downward (in the same year or a subsequent year). Regardless of whether or not EPA applies an administrative consequence, EPA may also pursue any and all appropriate enforcement action.

[31] ''Heel'' is defined at 40 CFR 84.3 as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container).'' EPA views this as an amount that is no more than 10 percent by weight of the amount of that same substance that is typically sold in a ''full'' container of that size. For example, if a ''full'' cylinder of HFC–134a typically contains 25 pounds of HFC–134a, then 2.5 pounds or less of HFC–134a remaining in the cylinder would be considered a heel.

A. Codifying the Point in Time That an Allowance Must Be Expended to Import Regulated Substances

Currently in 40 CFR 84.5(b)(1)(i) EPA prohibits persons from importing bulk [32] regulated substances except, among other conditions and with limited exceptions, ''[b]y expending, at the time of the import, consumption or application-specific allowances in a quantity equal to the exchange value-weighted equivalent of the regulated substances imported.'' Through implementing the HFC allocation system, EPA has described the exact point in time used to determine which calendar year allowance would need to be expended for each import of a regulated substance. EPA has spoken explicitly to this issue, including through a December 21, 2021, post on our HFC phasedown Frequently Asked Questions web page.[33] EPA stated that a marine vessel waiting off the coast of the United States in December 2021, that berthed in January 2022, would be required to expend a calendar year 2022 allowance for any HFCs that berth at a port in the United States in 2022. EPA is proposing to incorporate this previously stated interpretation into the 40 CFR part 84 regulatory text. Providing specificity on this point in the regulations would help ensure consistent and accurate accounting associated with allowance use for all importers.

The AIM Act and EPA's implementing regulations define ''import'' [34] broadly to mean:

to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, regardless of whether that landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Offloading used regulated substances [35] recovered from equipment aboard a marine vessel, aircraft, or other aerospace vehicle during servicing is not considered an import.

EPA is not proposing to amend this regulatory definition given that it matches the definition provided by Congress in the AIM Act. However, EPA is proposing a specific regulatory definition of when an allowance must be expended for the import of bulk regulated substances. Under this proposed approach, EPA would revise the prohibition language in 40 CFR 84.5(b)(1)(i) to remove the point that an allowance must be expended ''at the time of import'' and instead require that an allowance be expended at the time of ship berthing [36] for vessel arrivals, border crossing for land arrivals such as trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air.

If EPA were to finalize this proposed regulatory revision, EPA proposes to also require that the importer of record for the purposes of compliance with the final rule be in possession of allowances in the amount that will need to be expended at the time of filing their advance report under 40 CFR 84.31(c)(7). As explained in the Framework Rule, this advance notice reporting requirement is intended to allow ''EPA to verify if allowances are available or the HFCs have prior approval for import in the case of HFCs imported for destruction or transformation under 40 CFR 84.25, or imported for transshipment under 40 CFR 84.31(c)(3), and confirm whether a shipment should be allowed to clear Customs or not'' (86 FR 55186). If an entity does not possess requisite allowances for the import of bulk regulated substances at the time of the advance notice reporting, EPA will not be able to verify if allowances are available and whether the shipment meets EPA's HFC requirements to be released from CBP's custody. Given that advance reporting is required, no later than fourteen days [37] before allowances must be expended, EPA does not anticipate this proposed requirement would be a burden on regulated entities and would have significant benefits for EPA implementation and enforcement efforts.

For context, the point in time that a vessel berths, a truck crosses the border or the first point of terminus in U.S. jurisdiction for planes may be reflected as the ''Conveyance Arrival'' date for shipments, which importers or their brokers with access to the Automated Broker Interface (ABI) may find through an ACE Cargo Manifest/In-Bond/Entry Status Query. However, regardless of the date identified in ABI as the ''Conveyance Arrival,'' it is the importer's obligation, or it would be the importer of record's obligation as proposed in this rulemaking and discussed below in section V.B of this preamble, to ensure that it has expended the appropriate calendar year allowances in the appropriate quantity to align with regulatory requirements.

The Framework Rule at 40 CFR 84.5(b)(1)(i) prohibits the importation of bulk regulated substances without expending the required allowances, with limited exceptions. Since the definition of ''import'' in the AIM Act and the 40 CFR part 84 regulations finalized in the Framework Rule includes an ''attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States,'' it is clear that the existing statutory and regulatory framework prohibit an entity from attempting to land, bring, or introduce regulated substances into the United States without expending the required allowances, unless the importer meets one of the limited exceptions in the regulations. EPA does not intend to narrow prohibited behavior as defined under the AIM Act and the associated scope of liability with attempts to land, bring, or introduce regulated substances into the United States. We are proposing to add language at 40 CFR 84.5(b) that states: ''No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in 40 CFR 84.5(b)(1).'' These proposed changes to 40 CFR 84.5(b) maintain liability for attempting to land, bring, or introduce regulated substances into the United States without requisite allowances.

It is possible at the final rulemaking stage for EPA to not amend the general prohibition provided in 40 CFR 84.5(b)(1)(i). However, EPA identified a need through implementation of the Framework Rule to describe to importers which calendar year

[32] ''Bulk'' is defined at 40 CFR 84.3 as ''a regulated substance of any amount that is in a container for the transportation or storage of that substance such as cylinders, drums, ISO tanks, and small cans. A regulated substance that must first be transferred from a container to another container, vessel, or piece of equipment in order to realize its intended use is a bulk substance. A regulated substance contained in a manufactured product such as an appliance, an aerosol can, or a foam is not a bulk substance.''

[33] EPA. Phasedown of Hydrofluorocarbons Final Rule Frequently Asked Questions. *https://www.epa.gov/climate-hfcs-reduction/phasedown-hydrofluorocarbons-final-rule-frequently-asked-questions.*

[34] The definition of ''import'' is intended to allow for effective implementation of the AIM Act's HFC phasedown provisions and does not, nor was it intended to, match CBP's definition. The definition of ''import'' is similar to, but different from, the definition of ''date of importation,'' which is a CBP defined term and is discussed later in section VI.A.1 of this preamble.

[35] EPA defines ''used regulated substances'' (or used HFCs) in 40 CFR 84.3 as ''regulated substances that have been recovered from their intended use systems (including regulated substances that have been, or may be subsequently, recycled or reclaimed).''

[36] EPA has and continues to interpret berth to mean ''to moor (a ship) in its allotted place at a wharf or dock.''

[37] Currently under EPA's regulations, importers are required to provide advance notification of import no later than 14 days prior to import. As explained in a subsequent section, EPA is proposing to modify and take comment on these requirements based on the mode of transportation.

allowance must be expended for a specific import. Since the process of importing has multiple different events that play out over a period of days, weeks, and months, EPA previously described which year's allowances would be needed in case-specific examples as well as through the above-cited post on our web page to provide direction as to which year's allowances an individual import would be counted against for compliance purposes.

As an alternative proposal, EPA is considering revising text at 40 CFR 84.5(b)(1)(i) to specify that the calendar year allowances that must be expended are based on the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rail, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air. Such specificity is appropriate given that identifying a single point in time facilitates determination of which calendar year allowances must be expended.

B. Who must expend allowances for import?

EPA proposes to specify that only the importer of record can expend allowances for an import of regulated substances. Under CBP requirements, the importer of record is ultimately responsible for the correctness of the entry documentation and all associated duties, taxes, and fees.[38] Specifying that only the importer of record can expend allowances for an import would facilitate clarity, transparency, and accountability. It can be difficult for EPA to compare import records and other filings from CBP against advance notification records and the balance sheet of existing allowance holders without a clear expectation of how the entity that will expend allowances for an import of regulated substances would be identified in CBP filings. This can slow down EPA and CBP processing of imports at a minimum,[39] and in the worst-case scenarios can hamper EPA's ability to identify shipments to be held at the border to halt potentially illegal shipments from entering the United States. Requiring that only the importer of record may expend allowances for a shipment would address this difficulty because EPA would be able to advise CBP to hold or deny entry of merchandise where the importer of record is not an allowance holder or had not filed appropriate reports for the destruction, transformation, or transhipment of imported merchandise.

The Agency is also concerned about instances where allowance holders may try to circumvent the requirements in 40 CFR 84.19, including but not limited to the requisite offset for inter-company transfers of allowances. EPA has received inquiries from entities seeking to facilitate imports on an allowance holder's behalf where the facilitating entity would be listed on all available CBP paperwork and appear in meaningful ways to be the ''importer.'' In such instances, it would seem that the facilitating entity is truly importing regulated substances, and using a separate entity's allowances to do so. In such an instance, it seems more in line with existing EPA regulations and the AIM Act that either the allowance holder act more directly in the act of importing or for the allowance holder to transfer allowances to the facilitating entity. Making the regulatory change proposed in this section would help lead to such an outcome and would strengthen EPA's ability to track the importation of regulated substances and expenditure of allowances and support compliance assurance.

The Framework Rule at 40 CFR 84.3 defines ''importer'' broadly to include the importer of record and any person who imports a regulated substance into the United States, the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf, the consignee, the actual owner, and the transferee, if the right to draw merchandise in a bonded warehouse has been transferred. The Framework Rule at 40 CFR 84.5(b)(2) states that ''[e]ach person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that another party who meets the definition of an importer met one of the exceptions set forth in paragraph (b)(1).''

These two sections of the regulations help EPA maintain the integrity of the HFC Allocation Program by imposing broad liability on parties involved in importing HFCs while providing regulated parties with a flexible approach to contractually allocate risk. Without this approach, EPA could be forced to pursue enforcement actions for illegal imports against insolvent entities or entities without assets in the United States.

In order to align the proposal to only allow the importer of record to expend allowances with the existing regulations, we are also proposing to amend 40 CFR 84.5(b)(2) to make it clear that a person who meets the definition of an importer will be liable unless they can demonstrate that the importer of record possessed and expended the appropriate allowances. This would clarify that while the importer of record must be the entity possessing and expending allowances for imports of bulk regulated substances, if this requirement is not met, EPA has discretion to pursue enforcement action and/or administrative consequences on all entities that meet the definition of importer for violations of those requirements. This approach will encourage all parties who meet the definition of importer under EPA's regulations to ensure compliance with the HFC Allocation Program, provide regulated parties with a flexible approach to contractually allocate risk, and facilitate EPA's compliance evaluations.

Nothing in this proposal is intended To alter the liability provision at 40 CFR 84.5(b)(2).

C. Existing Requirement To Expend Allowances for Regulated Substance Components of Blends

In addition to clarifying when an allowance must be expended and the entity permitted to expend allowances for import, EPA is proposing revisions to 40 CFR part 84.5(b)(1) to reflect and further clarify the existing requirement that allowances must be expended to import bulk regulated substances regardless of whether the import is of an HFC that is imported as a single component substance, *i.e.,* neat substance, or whether the HFC is part of a multicomponent substance, *i.e.,* a blend or mixture containing one or more regulated substances.

The requirement to expend allowances equivalent to the EVe of a regulated substance that is a component of a blend when the blend is imported in bulk is based on a straightforward reading of the statutory language and was already made clear in the Framework Rule (86 FR 55133). EPA stated in the Framework Rule ''allowances [are] necessary to produce or import [a] blend, or more precisely, the regulated HFC components contained in the blend'' (86 FR 55142). Under the Agency's existing approach, the requisite number of allowances to import a multicomponent substance in bulk is determined by the exchange

[38] CBP. Tips for New Importers and Exporters. *https://www.cbp.gov/trade/basic-import-export/importer-exporter-tips.*

[39] As a real-world example, during EPA review of HFC imports, there was a single import entry with six unique entities (referred to as parties), where at least three parties, based on their named roles in the entry, could expend allowances to cover the import under EPA's existing regulations. This situation can be particularly confusing and lead to uncertainty if multiple listed parties in an entry are allowance holders.

values of the blend components that are regulated substances. If a blend contains multiple regulated substances, then the exchange values of each component are used to determine the number of necessary allowances (86 FR 55133–55134). If a blend contains components that are not regulated substances, then those components are not included in determining the number of necessary allowances. While the Framework Rule already made this requirement clear, we are proposing to revise the regulations so that they more explicitly reflect the already existing requirement to expend allowances for import of bulk multicomponent substances equivalent to the EVe quantity of regulated substance components contained within the blend. This proposed change to the regulations would therefore further enhance clarity but would not further change the scope of existing requirements.

D. Establish Presumed Amount for Heel Imports of Unknown Quantity

Many cylinders when ''empty'' still retain a residual amount of its contents, and some cylinders contain more than a heel if not all the contents are used. Removing this ''heel'' or remaining HFC requires the use of recovery equipment, like that used to recover refrigerant from an appliance. Through the Framework Rule, EPA has required that any import of bulk regulated substances in any quantity, including heels, requires the expenditure of allowances (86 FR 55183). In the Framework Rule EPA defined a heel as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container)'' (40 CFR 84.3; 86 FR 55183).[40] During early implementation of the requirement that allowances are required for the importation of heels of regulated substances, some entities have expressed concern that there may be situations where an entity does not know the precise weight of the heel imported until the container arrives at the entity's U.S. facility. Because the heel is the residual remainder left in a container, EPA understands that entities would know the type of regulated substance of which the heel is composed, but may not know the precise volume or weight of regulated substance remaining. Importers of regulated substances must expend allowances corresponding to the exchange-value weighted equivalent, which is obtained by multiplying the mass of the regulated substance by the exchange value particular to that given regulated substance. An entity needs to know the volume or weight of the heel to calculate the amount of allowances necessary to expend for the import of that heel.

To address this potential concern, EPA proposes to establish a standard presumption of an HFC heel content of 10 percent of the total potential volume of that container in EVe terms, if the heel weight has not been measured or documented prior to import. This standard presumption, by its terms, would only be available for the import of a heel, which was previously defined in the Framework Rule as ''the amount of a regulated substance that remains in a container after the container is discharged or offloaded (that is no more than 10 percent of the volume of the container)'' (40 CFR 84.3; 86 FR 55183). Because 10 percent is the upper bound of the volume of the container that a regulated substance could comprise and still be considered to be a ''heel,'' and the standard presumption, if finalized, would only be available for a shipment that meets the regulatory definition of a ''heel.'' EPA is proposing the standard presumption at the 10 percent level as an inherently conservative estimate of what quantity would be a heel in a container. If an entity wanted to take advantage of this standard presumption, under the proposed approach that entity would be required to expend allowances equivalent to 10 percent of the volume of the container being comprised of the regulated substance that is residual in the container. Under this proposed approach, the entity would also utilize the 10 percent presumption for the advance notification requirement of 40 CFR 84.31(c)(7). The proposed standard presumption is intended to only apply in situations where an entity is importing a heel of a regulated substance (*i.e.,* the container contains 10 percent or less of the total potential volume of the container) and the entity does not know the precise quantity, volume, or weight of the heel. If the quantity of HFCs in the container is known (or the importer should have had reason to know), then the regulations would apply as for any other shipment, *i.e.,* allowances would need to be expended to cover the quantity of HFCs held in the container. Given the possibility that an importer could use this provision as a way to underreport how much HFC they are importing, EPA requests comment on whether to set limits for the number of times an importer could use this presumption or whether to limit the total quantity that could be eligible in a given shipment, and if so, what the appropriate limits should be. For example, EPA could limit the use of the presumption to a set number of containers in a given year, to a set size category of containers (*e.g.,* for containers that have a maximum capacity under 7 kg), to shipments with a set number of containers (*e.g.,* fewer than 20 containers in a shipment), and/or if the net weight of regulated substances in a shipment is below a set weight (*e.g.,* 200 kg). Alternatively, EPA could presume the container is full unless the importer demonstrates otherwise, such as with records documenting the actual weight. EPA also requests comment on whether a provision like this is needed or if importers have resolved the early concerns with determining the heel weight prior to import.

As an alternative, EPA is also considering an option of allowing the importer of record to submit a provisional estimate of the quantity of heel imported, but requiring within a two-week period that the provisional estimate be corrected to match the exact amount of the imported HFC heel content. EPA invites comment on how this alternative option would align with the proposal in section V.A of this preamble. In particular, EPA is unsure how and when allowances would be expended under this provisional estimate model, and if allowances are expended based on the provisional estimate, how expended allowances would be reconciled with the corrected exact amount of imported heel. EPA is also concerned what the enforcement implications of this approach would be and seeks comment on whether such an approach would create avenues for an entity to illegally import that are not currently present under EPA's existing regulations.

EPA notes that these proposals would only apply to imports of HFCs that are heels and would not change the requirement to know the precise quantity of HFCs in a heel for an export. Further, anyone requesting an additional consumption allowance under 40 CFR 84.17 and anyone exporting HFC heels must continue to report the actual weight of a heel that is exported.

[40] EPA views this as an amount that is no more than 10 percent by weight of the amount of that same substance that is typically sold in a ''full'' container of that size. For example, if a ''full'' cylinder of HFC–134a typically contains 25 pounds of HFC–134a, then 2.5 pounds or less of HFC–134a remaining in the cylinder would be considered a heel.

VI. How is EPA proposing to clarify and revise recordkeeping and reporting requirements?

EPA established recordkeeping and reporting requirements in the Framework Rule, in accordance with subsection (d) of the AIM Act. These requirements can be found in 40 CFR 84.31. EPA is proposing to make amendments to certain recordkeeping and reporting requirements as well as proposing new recordkeeping and reporting requirements based on the experience gained in implementing the HFC phasedown program.

A. How is EPA proposing to modify the import reporting requirements?

In the Framework Rule, EPA established reporting requirements for importers at 40 CFR 84.31(c). EPA is proposing amendments which include specifying reporting obligations that fall to the importer of record, modifying elements of the advance notification requirement, clarifying how to consider import of heels, and new application of joint and several liability to quarterly and advance notification reporting requirements. EPA proposes all these amendments to provide additional detail on requirements and further promote transparency and consistency in implementation and enforcement of the rule.

1. Specify Reporting Obligations on the Importer of Record

To align with the proposal made elsewhere in this notice that only the importer of record may expend allowances for the import of bulk regulated substances, EPA is proposing to specify that certain reporting obligations will fall to the importer of record. Specifically, EPA is proposing that the importer of record, or their authorized agent,[41] would be required to file the advance notification report pursuant to 40 CFR 84.31(c)(7), and the importer of record will be required to make quarterly reports pursuant to 40 CFR 84.31(c)(1). EPA is making this proposal to improve clarity of who must fulfill certain reporting requirements with the Agency and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import.

2. Modify Advance Notification of Import Requirements

EPA's regulations contained in 40 CFR 84.31(c)(7) require ''[a] person importing a regulated substance, or their agent,'' to report certain information ''no later than 14 days before importation.'' The Agency requires reporting of data elements that are generally already collected by CBP (*e.g.,* cargo description, port of entry). This approach simplifies the process for importers or their customs brokers to provide such information to EPA on time. This would generally be at least, and likely more than, 14 days before a vessel carrying HFCs berths. EPA finalized these requirements because timely access to this information helps the Agency ensure that annual production and consumption in the United States are consistent with the reductions established by Congress in the AIM Act. Under the AIM Act, some entities will face burdens and costs associated with the Congressionally mandated phasedown; those increased burdens and costs create economic incentives to avoid compliance. That reality increases EPA's statutory and policy imperative to identify and apply tools that counter those incentives to increase the rate of compliance. Given the risk of noncompliance, as described throughout section IX of the Framework Rule, there is an imperative to develop reasonable tools to ensure compliance and thus achieve the objectives of the AIM Act. EPA has required entities to provide advance notification through ACE so that EPA can conduct a real-time review of allowances before the imported material is at a U.S. port or border. Given the serious concerns about potential noncompliance and the undermining of Congress's directive to ensure reductions in production and consumption occur consistent with the statutory schedule, real-time review of import data will support EPA's ability to effectively implement the statute.

The regulation enumerates several required elements that must be included in an advance notification of import filed through the CBP-authorized electronic data interchange system, such as the ABI. To align with the proposal made elsewhere in this notice that only the importer of record may expend allowances for the import of bulk regulated substances, EPA is proposing to specify that the advance notification reporting obligation falls to the importer of record, or their authorized agent. If EPA finalizes this proposal, this should improve clarity of who must submit the advance notification reports and also ease EPA implementation in aligning the reporting requirement with the entity obligated to expend allowances for the import.

To support effective real-time review of regulated HFC imports, including but not limited to using reported data to track imports using CBP databases to determine when allowances must be expended, EPA is proposing to add a required element to the report required pursuant to 40 CFR 84.31(c)(7), specifically the container number(s) of the shipment (if applicable), for all modes of import. EPA is also proposing that for maritime shipments, the vessel name and the International Maritime Organization (IMO) number must be included as part of the pre-importation notification.

EPA's current regulations in 40 CFR 84.31(c)(7) require provision of the ''quantity'' (in kilograms) of each import in the advance notification of import. Some regulated entities have expressed confusion over how to interpret this term. Under the current ''quantity'' requirement, some appear to be providing the net weight, while others appear to be providing the gross weight. EPA is seeking to resolve this ambiguity and standardize reporting. To improve clarity in the Agency regulations and provide for consistent treatment across regulated entities, EPA is proposing to specifically require the provision of both the net weight (or net product weight) and gross weight (net weight plus container weight), as well as unit of mass (*i.e.,* kilogram), for each container in the shipment in the pre-import notification. EPA requests comment on any potential difficulties that would be associated with meeting this revised requirement.

Currently 40 CFR 84.31(c)(7) requires the submission of advance notification ''no later than 14 days before importation'' of any regulated substance. Footnote 97 of the preamble to the Framework Rule states, in part: ''EPA is using the term 'date of importation' consistent with CBP's definition at 19 CFR 101.1. ''Date of importation'' means ''in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, ''date of importation'' means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade[42] such

[41] For purposes of providing advance notification of import through a system such as the ABI, the vast majority (if not all) notifications for the imports of regulated HFCs have been filed by customs brokers who are licensed and regulated by CBP to assist importers and exporters in meeting Federal requirements governing imports and exports. EPA included ''authorized agents'' as permissible reporting entities to accommodate this standard business practice.

[42] In the context of imports, EPA considers ''unlade'' to mean unload.

merchandise.'' To ensure consistency EPA proposes to amend 40 CFR 84.31(c)(7) to clarify that our reference to ''before importation'' in the Framework Rule means ''before the date of importation (consistent with the definition at 19 CFR 101.1).'' EPA also proposes to clarify in 40 CFR 84.25(a)(1)(v) and 40 CFR 84.31(c)(3)(i)(D) that these references are consistent with the definition at 19 CFR 101.1.[43] The ''Import Date'' box on CBP Form 7501, ''Entry Summary,'' as well as CBP Form 214 for entries where importers are applying for foreign-trade zone admission and/or status designation may provide information about the date of importation, but it is the importer's obligation to ensure that it has submitted its advance notification report in a timely manner regardless of the date identified in the Import Date box on these forms.

As noted above in this subsection, EPA currently requires prior notification no later than 14 days in advance. Based on EPA's implementation experience, this timeframe is achievable for shipment by sea, but can be impractical based on standard practices used for non-marine vessel imports, such as from trucks, trains, and airplanes. Importers bringing in goods via these transportation modes may not have the necessary information available at least 14 days in advance under current standard market practice. However, prior notification is important for EPA and CBP to be able to adequately review the shipment and relevant information. Accordingly, EPA is proposing to distinguish between modes of transport and to shorten the prior notification requirement for truck, rail, air, and other non-sea arrivals to 5 days prior to the date of importation, as discussed in the prior paragraph. EPA is proposing a 5-day prior notification after consultation with CBP about similar notification provisions used by other federal government agencies and informed by our stakeholder meetings that included customs brokers that have experience with importing a range of goods. EPA is requesting comment on whether this revised, 5-day prior notification is achievable for imports arriving via air, rail, truck, and other non-sea modes of transport. EPA is also considering whether it would be warranted to shorten the prior notification for arrivals by sea and is requesting comment on whether a 10-day prior notification requirement would be appropriate for arrivals by sea, since EPA has heard from some regulated entities that it takes fewer than 14 days for certain marine shipments from Europe.

3. Clarify the Reporting of Heels

In the previous ODS phaseout, EPA witnessed some situations where imported ODS, including in heels, had been reported to CBP as U.S. goods returned as a way to evade EPA's import restrictions. The Agency is concerned this could happen for HFCs. Given that EPA requires expenditure of allowances for import of any bulk regulated substance and must monitor the import of such HFCs, including for heels, as discussed in section V.D of this preamble, we are clarifying that the HTS Code for the regulated substance, regardless of whether or not comprising the heel, must be used, and not the HTS codes for U.S. goods returned or empty containers. As stated in the Framework Rule, EPA is concerned that misreported imports of HFCs could provide avenues for illegal imports or could contribute to inefficient implementation and processing of EPA and CBP procedures for comparing shipments against available allowances (86 FR 55183). Reporting all volumes of regulated substances with the applicable HTS Code for the contained HFCs facilitates accurate treatment of the imports of these regulated substances under EPA regulations.

4. Changes to and Requirement of Importer of Record Information

As part of the Agency's overall efforts to better identify and assess potentially violative shipments of regulated substances and to simultaneously streamline the import review process, EPA proposes to require the submission of certain information directly to EPA that had been voluntarily provided, in part, through the importer of record form (EPA Form #5900–556). EPA is proposing a regulatory requirement that certain information must be submitted by any entity anticipating being the importer of record for a shipment of regulated substances by November 15 of the prior calendar year. In other words, an entity that anticipates being the importer of record for a shipment of HFCs during calendar year 2024 must submit the required information by November 15, 2023. If an entity is not issued allowances directly from EPA, is the recipient of transferred or conferred allowances and it is impracticable for the entity to submit the importer of record form by November 15, EPA is proposing that the importer of record form be submitted within 15 calendar days of receiving the Agency's non-objection notice for conferral or inter-company transfer.

EPA is also proposing that if changes are necessary on the importer of record form after its initial submission that those changes be made at least 21 calendar days prior to any import of bulk regulated substances for which the concerned entity will be the importer of record after the change in information occurs.

As explained in the Framework Rule and reiterated in section VIII.C of this preamble, movement of allowances between a parent company and its subsidiaries, or among companies that are commonly owned, may occur without a transfer (86 FR 55145). However, there may be instances where these corporate relationships are not immediately clear to EPA. The importer of record form provides information on corporate relationships to EPA, and accounting for such instances would ensure not only that allowances are being expended by the right entity, but also that reviews of shipments are not unnecessarily delayed. In a similar manner, entities receiving allowances may operate under different names, *e.g.,* ''Doing Business As'' (DBA), where it is not immediately clear to the Agency that the DBA is associated with the allowance holder. Accordingly, EPA is proposing that the names of all subsidiaries, entities majority owned and/or controlled by the same individual(s),[44] all DBAs, and any corresponding importer of record numbers are included on the importer of record form, even if the importer of record number(s) is identical for the subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or DBAs as it is for the allowance holder. In order to further efficient and accurate review of imports by EPA, the Agency reminds regulated entities of the importance of ensuring that when an allowance holder or associated subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA provides advance notification of import filed through a CBP-authorized electronic data interchange system, such as the ABI, that the importer of record number accurately aligns with the name of the importer.

As part of this information submission, EPA is also proposing that

[43] These clarifications citing, and relying on, definitions from CBP are intended to provide a consistent point in time for which importers must submit advance notification; however, they are not meant to change or otherwise be linked to how EPA has defined ''import'' in 40 CFR part 84.

[44] Note that EPA intends to align the specific definition of ''entities majority owned and/or controlled by the same individual(s)'' with the proposal regarding the ability to move allowances among commonly owned or companies with certain affiliation without a transfer, if it finalizes the proposal in section VIII.C of this preamble.

if an entity receiving allowances (either allocated directly by EPA or through a conferral or transfer) includes subsidiaries, entities majority owned and/or controlled by the same individual(s), and/or DBAs as part of its form, the corporate structure of the entity receiving allowances must also be provided, and the description of the corporate structure must, at a minimum, explicitly show the relationship between the allowance holder and each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and/or DBA. An entity also would need to provide the owners, and their respective percentage of ownership, of each subsidiary, entity that is majority owned and/or controlled by the same individual(s), and DBA on the submitted form. Further, an entity would need to indicate how many allowances will be expended by each other affiliated entity (*e.g.,* subsidiaries, majority owned and/or controlled), specifically a quantity of allowance that will be expended by each affiliated entity identified by name and importer of record number(s). Collectively, the proposed revisions to the importer of record form would allow EPA to have a current understanding of pertinent information concerning the allowance holder, such as how to confirm that the importer(s) of record was still active, whether there had been a change in ownership, and whether ownership of subsidiaries and other majority-owned and/or controlled entities was shared, common, or familial. These revisions would help ensure that EPA has the updated information necessary to efficiently monitor and implement this program.

As an alternative to EPA's proposal to require the reporting of how many allowances will be expended by each other affiliated entity, EPA is considering and seeking comment on requiring information as part of the advance notification requirement of 84.31(c)(7) that would specify which entity was allocated the allowances or received the allowances through a transfer that are associated with an individual shipment.

5. Joint and Several Liability for Importer Reporting Requirements

EPA proposes in section VI.A.1 of this preamble to specify that the advance notification reporting obligation of 40 CFR 84.31(c)(7) and quarterly reporting requirements of 40 CFR 84.31(c)(1) falls to the importer of record, or their authorized agent for advance notification. EPA is making this proposal to align with the proposed change that the importer of record must expend allowances to import bulk regulated substances. However, such proposed changes to the reporting requirements could have an adverse impact on compliance with and/or EPA's ability to enforce reporting obligations. As explained in more detail elsewhere in this notice and in EPA's September 2021 Framework Rule, compliance with reporting requirement is critically important so that EPA can build a robust and enforceable allowance system. Complete and accurate reporting is an important component of EPA's efforts to monitor compliance, verify relevant information, and enforce requirements.

Accordingly, EPA proposes to apply joint and several liability for violations of the quarterly reporting and the advance notification reporting requirements. Specifically, in 40 CFR 84.31(c)(10), EPA proposes that each person meeting the definition of an importer is jointly and severally liable for a violation of the quarterly reporting requirements at 40 CFR 84.31(c)(1) unless they can demonstrate that the importer of record fulfilled the quarterly reporting requirements, and in 40 CFR 84.31(c)(11), EPA proposes that each person meeting the definition of an importer is jointly and severally liable for a violation of the advance notification requirements at 40 CFR 84.31(c)(7) unless they can demonstrate that the importer of record or their authorized agent fulfilled the advance notification requirements. These revisions would provide EPA with additional enforcement tools to ensure that EPA receives necessary information concerning past and incoming imports.

Adding joint and several liability would parallel the proposal made in section V.B of this preamble to apply the joint and several liability provisions of 40 CFR 84.5(b)(2) to each person who meets the definition of an importer, unless they can demonstrate that the importer of record possessed and expended the appropriate allowances for the import of bulk regulated substances. As further discussed in section V.B of this preamble, this joint and several liability provision provides EPA discretion to pursue enforcement actions necessary to ensure compliance while providing regulated parties with a flexible approach to contractually allocate risk.

With respect to the proposal to extend joint and several liability to reporting provisions, EPA requests comment on any potential reporting difficulties that could be associated with extending joint and several liability for these importer reporting requirements and on the potential burden or downsides associated with these proposed requirements. This proposed change would require individuals involved in the import of HFCs to coordinate to ensure reporting is complete and accurate, so EPA also seeks comment on whether additional resources and/or processes would be helpful to support this coordination and prevent duplicative reporting for the same import.

Note that the importer of a regulated substance in 40 CFR 84.31(c)(2) must maintain certain records to document each import. EPA also seeks comment on whether more specificity is needed than ''importer,'' for example to define that recordkeeping obligations would fall specifically on the importer of record, and is taking comment on the effectiveness, accuracy, and completeness of the importer bearing responsibility for the recordkeeping in this section.

B. Modify Recordkeeping and Reporting Requirements Regarding Expending Allowances

In the Framework Rule, EPA codified various recordkeeping requirements for producers and importers of HFCs. In 40 CFR 84.31(c)(2), EPA established the types of records that importers must maintain. In 40 CFR 84.31(b)(3), EPA codified recordkeeping obligations for producers. For both importers and producers, EPA is proposing to add an obligation to the existing recordkeeping requirements that producers and importers undertake same day documentation of any allowances expended. Put another way, if a producer or importer expends allowances, on the same day the producer or importer would have a recordkeeping obligation to document the date, quantity, and type of allowances expended on that date. EPA is further proposing to require that entities include this record of same day documentation as part of the quarterly report required under 40 CFR 84.31(b)(2) (for producers) and 40 CFR 84.31(c)(1) (for importers). Additionally, EPA is proposing to require each producer and importer certify to EPA as part of their quarterly reporting that they expended the requisite number of allowances on the dates specified in the form for each date-specific production or import transaction.

If this proposal is finalized, EPA would add additional fields to the producer and importer reporting forms to document the specific date allowances were expended. This would be a slight change for the importer form, since it already includes a ''date of import'' column, which should match

the ''date allowances were expended'' on a per transaction basis. For the quarterly producer report, EPA would need to collect date-specific production information.

Finalizing these additional recordkeeping and reporting obligations would be intended to allow for better accountability to ensure no entity is producing ''regulated substances, intentionally or unintentionally, in excess of the quantity of unexpended production allowances and consumption allowances or unexpended application-specific allowances held'' by that entity at a given point in time (40 CFR 84.5(a)(1)). Finalizing these recordkeeping and reporting obligations would also allow EPA better accountability to ensure that entities expend allowances on import per the requirements of 40 CFR 84.5(b)(1)(i). EPA is proposing this additional requirement to strengthen and ease implementation and enforcement of the HFC phasedown obligations. In requiring such a recordkeeping obligation, EPA will enable better oversight for any onsite inspections to align regulated substances found on site and corporate records with up-to-date information on allowances expended for such materials. In requiring these records and a certification be included in the entity's quarterly report, EPA intends to enable better coordination of information provided by the Agency with Customs records and other available information to help ensure the integrity of the allowance system. EPA understands that entities likely already undertake this sort of date-specific tracking of allowances for corporate records, so expects that establishing this requirement would have minimal effect on regulated entities, but invites comment on the potential burden or downsides associated with this proposed requirement.

C. Modify the Reporting of Regulated Substances Produced for Transformation, Destruction or Use as a Process Agent at a Different Facility Under the Same Owner

EPA currently requires in 40 CFR 84.31(b)(2)(i)–(iii) that each producer of a regulated substance include in the quarterly report for each facility information on the quantity of each regulated substance produced for use by the producer or a second party in processes resulting in their transformation, destruction, or use as a process agent. There are situations, however, where regulated substances are produced at one facility, but transformed, destroyed, or used as a process agent at another facility owned by the same entity. Such situations are distinct from regulated substances transformed, destroyed, or used at the same facility where the regulated substances were produced and those transformed, destroyed, or used by an entity different from the one that produced the regulated substances. EPA is proposing that 40 CFR 84.31(b)(2)(i)–(iii) be modified to include requirements to report the name, quantity, and recipient facility for regulated substances produced at one facility for, correspondingly, transformation, destruction, or use as a process agent at another facility owned by the same entity.

Since EPA requires the names and quantities of transformed or destroyed regulated substances produced or imported by another entity to be reported at the facility level under 40 CFR 84.31(e)(1), these proposed revisions to these sections would establish consistency within the regulations under 40 CFR part 84. Furthermore, these revisions would provide greater transparency within the system and would better align with current AIM Act reporting forms and the GHGRP, both of which track transformation, destruction, and use as a process agent by facility. This facility-level reporting would increase transparency, such as for environmental justice concerns so that local communities have better insight into how regulated substances may move between facilities owned by a single entity. Such information would also provide EPA a better understanding of industry practice, help verify disposition of regulated substances, and may inform future rulemakings.

D. Additional HFC Production Facility Emissions Reporting Requirements

Currently, EPA requires, as part of the producer one-time report, that producers provide a ''list of any coproducts, byproducts, or emissions from the production line that are other regulated substances; ozone-depleting substances listed in 40 CFR part 82, subpart A; or hazardous air pollutants [HAP] initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63'' (40 CFR 84.31(b)(1)(v)). These one-time reports were due May 1, 2022, for existing facilities and within 120 days for any facility that begins producing HFCs after January 1, 2022.

The reported information is qualitative (*i.e.,* producers must only provide a list of the relevant chemicals) and is only required a single time, so the existing regulatory requirement would not allow the Agency to monitor changes in the list of relevant chemicals or volumes of relevant chemicals at facilities. EPA is particularly concerned about an inability to monitor such changes at facilities as the HFC phasedown progresses and as facilities may transition to production of lower EVe regulated substances or away from production of regulated substances altogether. Some entities with multiple production facilities may choose to consolidate production of regulated substances at a subset of facilities as the phasedown continues, which could lead to an increase in regulated substance production at a single facility, despite the overall phasedown of production. EPA stated its intention in the Framework Rule to ''continue to monitor the impacts of [the HFC phasedown] program on HFC and substitute production, and emissions in neighboring communities, as we move forward to implement this rule'' (86 FR 55129).

As such, EPA is proposing to build on the one-time reporting requirement and require annual reporting of the emissions from each facility's HFC production line emissions units, specifically HAP, ODS, and HFCs.[45] Collecting these data would allow the Agency to more closely monitor potential impacts of the HFC phasedown on relevant emissions and on communities located near facilities producing regulated substances. As noted in the Framework Rule, ''EPA may consider taking appropriate action in the future[,] including action [. . .] under CAA authorities, in future HFC allocation rules, or under other relevant authorities, if we develop further information indicating there is a risk of disproportionate impacts'' (86 FR 55129). EPA views information on the impacts of HFC production as important for informing policies, regulations, and other decisions, including to carry out the Agency's commitment to environmental justice. For example, EPA could use data collected through this reporting requirement, if finalized, in crafting the next allowance allocation methodology if shifts in production resulted in disproportionate impacts on overburdened communities. EPA could also consider using the reported data to propose alternative offsets for production allowance transfers based on potential disproportionate impacts. These proposed regulatory requirements

[45] While most ODS and HFCs are not HAP and generally do not have local effects, some do (*e.g.,* carbon tetrachloride). Further, collecting this information from HFC production facilities allows EPA to better track potential changes in emissions of all three sets of chemicals and inform policies, regulations, and other decisions.

can also be viewed as part of an effort to improve data transparency particularly with regard to the Agency's commitment to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Therefore, EPA is proposing to require more detailed annual reporting on emissions from each facility's HFC production lines.

The Agency has reviewed other potential sources of data to determine if facilities producing regulated substances are already required to report annual emissions at the production line level under other EPA regulatory programs, but did not identify such requirements. Based on EPA's review, data currently required to be submitted to EPA under different authorities are not detailed or comprehensive enough to allow the Agency to sufficiently monitor potential changes in emissions due to the phasedown of HFCs. Emissions data reporting is required for some larger facilities, and can be obtained, at the facility- or process-level, through the National Emissions Inventory (NEI), Toxics Release Inventory (TRI), and Title V permits. However, process-level emissions data are not required for all HFC production facilities, which results in data gaps that hinder EPA's ability to identify relevant emissions and track changes over time.

AirToxScreen, and prior to its 2017 release the National Air Toxics Assessment (NATA) risk screen, identifies the cumulative risk to individuals within an area due to impacts from surrounding facilities without distinguishing between emission sources. While community-level analyses are available for all facilities producing regulated substances based on cumulative emissions, an HFC production facility may be emitting only one portion of the total modeled emissions with other portions being attributable to other nearby facilities contributing to the overall risk value. The currently available data do not allow EPA to consistently isolate the portion of the risk associated with HFC production, or to track potential changes in the overall risk level that could be attributable to the phasedown in HFC production and consumption, for example resulting from shifts in production levels of HFCs.

To address these identified data and knowledge gaps, EPA is proposing to require that each facility producing regulated substances report on an annual basis emissions for each HFC production line, including the:

—Quantity (in pounds) of each of the following emitted at the facility in the prior year: HAP initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63; HFC listed in Appendix A to 40 CFR part 84; and ODS listed in appendix F of 40 CFR part 82, subpart A; and

—Quantity (in pounds) of each such HAP, HFC, or ODS emitted in the prior year on an emission unit basis (*e.g.,* ''Storage tank #45a'', or ''Scrubber #2'').

EPA proposes that the reported emission levels reflect each facility's and emission unit's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. EPA is considering a range of options by which emissions would be reported and is welcoming comment on the associated data, calculations, and method used to determine emissions. While EPA is currently considering a range of options, the Agency intends to finalize a single chosen approach for determination of emissions in that there is a limited, well-understood universe of HFC production facilities and those facilities share a number of common features.

EPA is considering the following options to be applied to determine the emissions required to be reported under this proposed approach:

—Continuous emission monitoring system;

—tack test at a six month or annual frequency;

—Material balance;

—U.S. EPA emission factor; or

—The compliance method required under the most recent permit issued to the facility pursuant to 40 CFR part 70 or 71, under the facility's operating permit for sources without a permit under 40 CFR part 70 or 71, or using federally recognized procedures if emissions cannot be determined using the compliance methods from the facility's air permit.

EPA is also seeking comment on whether fenceline monitoring, in particular of HAP that potentially pose the greatest risk to local communities, would be appropriate, in combination with or as an alternative to gathering data on emissions from these facilities. If this approach is finalized instead, EPA seeks comment on the advantages and disadvantages of this approach, what metrics should be reported, and how EPA could use this data to better understand the role that HFC production plays in emissions of HAP, HFCs, and ODS. EPA is proposing a range of options and is seeking comment to inform what option to finalize in order to allow for the effective monitoring of these emissions and gathering of information that could be relevant if a future rule would be appropriate under the AIM Act, CAA or other authority to address any potential disproportionate impacts associated with the HFC phasedown. EPA also requests comment on what methods of emissions estimation and monitoring are in practice currently, and whether these methods are appropriate for monitoring emissions changes over time at regulated substance production facilities. The Agency is also taking comment on whether the data listed in this proposal for additional reporting are already required under different authorities. Finally, in the interest of data transparency, if finalized, EPA intends to publish the emissions data on the Agency's website. The public availability of the data will allow for the public, local environmental agencies, or other entities to also monitor emissions changes due to changes in HFC production from facilities in their communities.

Subsection (k) of the AIM Act provides that section 114 of the CAA applies to ''any rule, rulemaking, or regulation'' promulgated pursuant to the AIM Act. For purposes of applying section 114, the AIM Act provides that section 114 of the CAA shall apply as though the AIM Act were part of Title VI of the CAA. Section 114(a) provides EPA with the authority, among other things, to require any person who owns or operates any emission source that may have information necessary to provide such information as the Administrator may reasonably require for purposes of carrying out any provision of the CAA, or the AIM Act pursuant to subsection (k). As noted, EPA has determined that requiring reporting of the outlined data regarding emissions from HFC production facilities is necessary to inform future decisions on whether it may be appropriate to undertake a rulemaking to address potential disproportionate impacts associated with the HFC phasedown.

The Agency requests comment on whether it would be appropriate and feasible to require each facility producing an HFC to report on an annual basis the quantity of each criteria air pollutant, and its precursors, for which EPA has established a National Ambient Air Quality Standard

(NAAQS)[46] emitted by the facility and the quantity of each such pollutant emitted annually from each HFC production line on an emission unit basis. EPA is proposing to require reporting both for the regulated substance production line as a whole and the emission units associated with the production line to understand where emissions are most significant and to better gauge what, if any, additional regulatory action could be considered in future.

VII. How is EPA proposing to revise sampling and testing requirements?

In the Framework Rule codified at 40 CFR 84.5(i), EPA established the requirement to label containers containing a regulated substance that are sold or distributed, or offered for sale or distribution, and for certain entities to confirm the accuracy of the labels by testing a representative sample of contents to verify that the composition matches the container label. In that regulatory section, EPA also codified a prohibition on the sale or distribution of regulated substances for use as a refrigerant that did not meet specifications in appendix A to 40 CFR part 82. EPA is proposing to amend these requirements and related requirements to establish additional verification requirements and codify procedures to be followed to meet the requirement to test a representative sample. These proposed changes are intended to provide clarity and direction to regulated entities, create a consistent approach to help ensure smoother implementation, and provide greater assurance on the accuracy of these container labels, particularly for non-refrigerant applications. If finalized, these proposed revisions are intended to lead to improved veracity in compositional testing, which in turn would result in more accurate expenditures of consumption and production allowances. These modifications would also improve the ability of EPA to understand the process taken and reliability of information gleaned in the compositional determinations that are made throughout the supply chain.

Specifically, EPA is proposing to (1) Modify 40 CFR 84.5(i)(3)(i) to add that already required sampling and testing of regulated substances must follow a combination of appendix A of 40 CFR part 82, subpart F and EPA Method 18 in Appendix A–6 to 40 CFR part 60 to verify the label composition for all applications; (2) add a requirement to sample and test under specified methodology to ensure compliance with the existing requirements in 40 CFR 84.5(i)(3)(ii); (3) define the records required under 40 CFR 84.33 associated with testing and add recordkeeping requirements to 40 CFR 84.33 for recyclers for fire suppression and repackagers to ensure results from required testing are maintained; (4) add definitions at 40 CFR 84.3 of ''batch'' and ''representative sample'' and clarify the relationship between these terms; (5) add a definition at 40 CFR 84.3 for ''laboratory testing'' such that laboratories used by regulated entities to meet the existing requirement in 40 CFR 84.5(i) must be accredited and follow the test methods in appendix A of 40 CFR part 82, subpart F; and (6) add a requirement that certificates of analysis accompany all imports of regulated substances.

A. Use of Appendix A to 40 CFR Part 82 and EPA Method 18 in Appendix A–6 to 40 CFR Part 60 for Sampling and Testing

In the Framework Rule EPA codified regulations in 40 CFR part 84 that require, for regulated substances sold as refrigerants, that sampling must be done consistent with appendix A to 40 CFR part 82, subpart F. Appendix A is based on the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 700–2016, *Specifications for Refrigerants.* Appendix A references detailed ''referee tests'' that are included in the *2008 Appendix C to AHRI Standard 700–2014,* which are incorporated by reference in 40 CFR 82.168(b)(2). Generic maximum contaminant levels are defined in 40 CFR 82 subpart F appendix A1.

40 CFR part 84 does not specify the sampling methods that must be used to verify that the composition of the regulated substances matches the container labeling for regulated substances that are sold for another use than as refrigerants. The current regulations also only explicitly require that sampling is consistent with appendix A, but they do not explicitly require that test methods are consistent with appendix A.

EPA is proposing to revise 40 CFR 84.5(i)(3)(i), such that no person producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances may sell or distribute, or offer for sale or distribution, regulated substances without first testing a representative sample of the regulated substances that they are producing, importing, reclaiming, recycling for fire suppression, or repackaging to verify that the composition of the regulated substance(s) matches the container labeling using the sampling and testing methodology prescribed in 40 CFR part 82, subpart F appendix A for regulated substances offered for sale and distribution as refrigerants and using the following testing methods for regulated substances offered for non-refrigerant uses:[47]

TABLE 3—NON-REFRIGERANT REGULATED SUBSTANCE TESTING METHODS

Regulated substance	Testing method
HFC–23, HFC–134, HFC–125, HFC–143a, HFC–41, HFC–152a	Part 7 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC–134a, HFC–143, HFC–245fa, HFC–32, HFC–152	Part 9 of *2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC–365mfc, HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–43–10mee.	EPA Method 18; Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

[46] The pollutants for which EPA has established a NAAQS are: sulfur dioxide, PM_{10}, $PM_{2.5}$, carbon monoxide, ozone, nitrogen dioxide, and lead. See 40 CFR part 50.

[47] EPA is proposing to use Part 7 of 2008 Appendix C for Analytical Procedures for AHRI Standard 700–2014 as the testing method for HFC–134 is because HFC–134a is covered as a potential contaminant, whereas Part 9 looks at HFC–134 as a contaminant in HFC–134a. The same rationale applies to the testing methods used for HFC–143a and HFC–143. The testing methods are chosen based on the list of target analytes provided at each method.

EPA is proposing these modifications to ensure that the testing methods used to verify the composition of all bulk HFCs can achieve at least the same accuracy as those specified in appendix A to 40 CFR part 82, subpart F.

Under the existing regulations at 40 CFR 84.5(i)(3)(ii), no person may sell or distribute, or offer for sale or distribution, regulated substances as a refrigerant that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants. EPA is proposing to clarify that this existing requirement is applicable for a regulated substance or mixture containing regulated substance(s). EPA is further proposing to add a requirement under 40 CFR 84.5(i)(3)(ii) that producers, importers, reclaimers, recyclers for fire suppression, or repackagers must verify the applicable specifications using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F.

EPA is proposing these modifications to ensure that the testing methods used to verify the composition of all bulk HFCs offered for sale or distribution can achieve at least the same accuracy as those specified in appendix A to 40 CFR part 82, subpart F. All of these proposed requirements are intended to reduce the frequency that mislabeled, misrepresented, or off-specification regulated substances enter commerce from producers, importers, reclaimers, fire suppressant recyclers, and repackagers. EPA is also concerned that, without testing requirements, or specification around what sampling and testing methodology must be used, the composition of containers sold could not be sufficiently accurate, resulting in inaccurate quantities of consumption or production allowances expended.

Collectively, the proposed changes will ensure that defined procedures will be used to perform testing on representative samples of single component HFCs or multicomponent HFC mixtures by all entities that produce, import, reclaim, recycle for fire suppression, or repackage HFCs. Regulated substances used as refrigerants must conform to the specifications provided in appendix A to 40 CFR part 82, subpart F, or, if not listed therein, the Generic Maximum Contaminant Levels in appendix A1 to 40 CFR part 82, subpart F. At a minimum, the proposed changes require that samples of single component regulated substance shall be quantitively analyzed for the component on the label, air and other non-condensable compounds, impurities (both volatile impurities and halogenated unsaturated volatile impurities), and high boiling residue. At a minimum, the proposed changes require that samples of multicomponent HFC mixtures shall be quantitatively analyzed for each component expected based on the container label, air and other non-condensables, impurities (both volatile impurities and halogenated unsaturated volatile impurities), and high boiling residue.

EPA believes that this testing regime is appropriate to determine the composition of HFCs sold for both refrigerant and non-refrigerant applications. The proposed methods for testing HFCs are provided in Table 3. For illustrative purposes, EPA is also noting the specifications for regulated substances in Table 4.

TABLE 4—REGULATED SUBSTANCE SPECIFICATIONS

Regulated substance	Specifications
HFC–23, HFC–32, HFC–125, HFC–134a, HFC–143a, HFC–152a, HFC–227ea, HFC–236fa, HFC–245fa.	Refrigerant use: All in Table 1A of 40 CFR part 82, subpart F, appendix A. Non-refrigerant use: Testing results match nominal composition on label.
HFC–41, HFC–134, HFC–143, HFC–152, HFC–236cb, HFC–236ea, HFC–245ca, HFC–365mfc, HFC–43–10mee.	Refrigerant use: All in 40 CFR part 82, subpart F, appendix A1. Non-refrigerant use: Testing results match nominal composition on label.

The testing regime specified in AHRI 700 is sufficiently flexible to allow for the use of more recent analytical technology. Section 5 of appendix A to 40 CFR part 82, subpart F, entitled ''Sampling and Summary of Test Procedures,'' identifies the test methods in the section as ''referee tests'' and states that, ''[i]f alternative test methods are employed, the user must be able to demonstrate that they produce results at least equivalent to the specified referee test method.'' The referee test for refrigerant identification is specified in section 5.3 of appendix A as gas chromatography as described in 2008 appendix C to AHRI Standard 700–2014 (incorporated by reference, see § 82.168(b)(2)). Appendix C to AHRI Standard 700–2014 contains several different gas chromatography methods, specialized for different refrigerant types. Section 7 of each method in Appendix C to AHRI Standard 700–2014 provides information concerning the sensitivity, precision, and accuracy of that test method. Therefore, to demonstrate that an alternate test method is equivalent, it is sufficient to demonstrate that the alternate test method can achieve the same sensitivity, precision, and accuracy as the referee test method.

EPA anticipates that alternate test methods could include gas chromatography using physical layer open tubular columns alternative to packed columns, two-dimensional alternatives to one-dimensional chromatography, and alternate detectors (*e.g.,* mass spectrometer as an alternative to a flame ionization detector). Since Appendix C to AHRI Standard 700–2014 does not include specific test procedures for determining the quality of regulated substances that are not used as refrigerants, EPA is proposing using EPA Method 18 for HFC–227ea, HFC–236cb, HFC–236ea, HFC–236fa, HFC–245ca, HFC–365mfc, HFC–43–10mee, isomers of listed regulated substances and mixtures of regulated substances not used as a refrigerant. EPA Method 18, ''Measurement of gaseous organic compound emissions by gas chromatography,'' can be found at Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18. This method appears to be appropriate for the HFCs regulated under the AIM Act and would provide a well-established standard used in other EPA regulatory programs. EPA requests comment on whether this standard is appropriate to fill gaps in the requirements in appendix A to 40 CFR part 82, subpart F, or if EPA could rely on appendix A to 40 CFR part 82, subpart F, including appendix A1 and the incorporated Appendix C to AHRI Standard 700–2014, for all sampling and testing requirements. EPA could finalize an approach that uses one or both standards.

While the current testing and sampling requirement in 40 CFR 84.5(i)(3) applies to entities producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances, EPA seeks comment on whether to extend this requirement to exporters (or exporters that request additional consumption allowances under 40 CFR 84.19) to verify the regulated substances being exported match the label and, where relevant, the request for additional consumption allowances. EPA also seeks comment on whether to extend the testing and sampling requirements to additional entities, including others that sell or distribute regulated substances, or that offer them for sale and distribution as well as those that transform, use as a process agent, destroy, or receive application-specific allowances in the six applications listed in subsection (e)(4)(B)(iv) of the AIM Act to further ensure the label matches the regulated substance in containers and aid in the detection of off-specification and potentially non-compliant containers of regulated substances. Finally, EPA seeks comment on whether to establish purity and other specifications for non-refrigerants similar to those found in appendix A to 40 CFR part 82, subpart F or if the proposed approach of requiring the label to match the nominal composition of regulated substance(s) in the container is sufficient to ensure purchasers know the contents of the container and that all entities can verify the number of allowances that needed to be expended when the regulated substances in the container were imported or produced.

B. Recordkeeping of Tests

EPA proposes to modify the existing recordkeeping requirements in 40 CFR 84.31 to specify that the types of records required to be maintained related to testing results includes instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

Since the existing requirement in 40 CFR 84.5(i)(3)(i) requires fire suppressant recyclers [48] and repackagers [49] to test a representative sample of regulated substances before they are sold, EPA is proposing that the recordkeeping requirement for test records be extended from producers, importers, and reclaimers to include recyclers for fire suppression and repackagers to ensure sufficient records are maintained. Specifically, EPA is proposing to add a recordkeeping provision at 40 CFR 84.31(j)(3)(ii) and 84.31(k) requiring that recyclers for fire suppression and repackagers maintain dated records of batch tests of regulated substances packaged for sale or distribution, including information on instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review. This would support enforcement efforts if EPA identifies an off-specification or mislabeled container of regulated substances and needs to confirm proper testing was conducted to verify the contents of the container(s).

To align with the request for comment on whether to extend the testing and sampling requirements, EPA seeks comment on whether to extend this recordkeeping requirement to other entities, such as exporters.

C. Define ''Batch'' and ''Representative Sample'' and Clarify the Relationship Between These Terms

In the Framework Rule, reclaimers, producers, and importers are required to maintain records of the results of ''batch tests'' of regulated substances. Producers and importers are required to keep ''[d]ated records of batch tests of regulated substances packaged for sale or distribution'' (40 CFR 84.31(b)(3)(xi) and 40 CFR 84.31(c)(2)(xvi)), whereas the requirement for reclaimers does not depend upon sale or distribution and echoes the language in the definition of ''reclaim.'' EPA is proposing to add requirements to maintain dated records of batch tests of regulated substances packaged for sale or distribution for fire suppressant recyclers and repackagers.

The current rule specifies testing requirements for producers and importers only at 40 CFR 84.5(i)(3)(i), which requires testing of a ''representative sample.'' Regulated substances sold as refrigerants must be sampled according to appendix A. Part 5.2, Refrigerant Sampling at 5.2.1 provides that ''[s]pecial precautions should be taken to ensure that representative samples are obtained for analysis.'' Since the rest of section 5.2 specifies methods for sampling refrigerants, it is clear that the intent of these sampling methods is to allow for the collection of representative samples of refrigerants. The sampling methods defined for refrigerants are specific to sampling of individual cylinders, which are commonly used in the sale of refrigerants, but may not cover all possible containers used for sales or distributions of refrigerants. EPA's proposed changes for regulated substances, both sold as a refrigerant and for other uses, is specified in the preceding section.

EPA is proposing to include a definition of ''batch'' at 40 CFR 80.3. EPA is proposing that a batch be defined as (1) A vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers HFCs directly for sale or distribution, or for repackaging for sale or distribution or (2) a population of small vessels, containers, or cylinders that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

EPA is also proposing to define the term ''representative sample'' within the context of this regulation. EPA is proposing a two-part definition of representative sample. The first defines a representative sample of a container for sale as a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of HFC(s) in an unbiased and precise manner. This definition is consistent with the implied notion of representative sample in appendix A of CFR part 82 Subpart F, which outlines specific methods for sampling containers. For the second part, EPA proposes to define a representative sample of a batch as a sample that can be used to infer that the composition of HFC(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch are within stated tolerances (*e.g.,* within the specifications established in the tables in section 6 of appendix A to 40 CFR part 82, subpart F, such as

[48] Generally, an entity that collects used HFC fire suppressants and directly resells those recovered HFCs—with or without any additional reprocessing including testing for purity—to another person for reuse as a fire suppressant would qualify as a fire suppressant recycler (also referred to as a ''recycler for fire suppression'' in 40 CFR part 84, subpart A). A person that recovers and aggregates used HFC fire suppressants for distribution to another entity for reprocessing before being sold for reuse as a fire suppressant would not be a fire suppressant recycler. Reselling HFC fire suppressants that have already been recovered and subsequently reprocessed by another person would not be a fire suppressant recycler. In effect, a fire suppressant recycler is the first entity to reintroduce recovered HFC fire suppressants into the market use as fire suppressant. EPA requests comment on whether existing interpretations and guidance provide sufficient clarity on this issue or whether EPA should codify this explanation to provide a regulatory definition of fire suppressant recyclers.

[49] EPA views repackagers and cylinder fillers interchangeably under the regulations at 40 CFR part 84, subpart A, and would define repackagers as entities who transfer regulated substances, either alone or in a mixture, from one container to another container prior to sale or distribution or offer for sale or distribution. EPA requests comment on whether it should codify this explanation to provide a regulatory definition of repackagers.

composition and percent by volume air and other non-condensables).

EPA is proposing to make these changes to allow for the common scenario when testing of a batch is used to satisfy the requirement for ''testing of a representative sample'' to verify that the composition of HFCs in containers matches the container labeling, while also requiring that these batch test results produce valid labels for individual containers. These changes will help clarify the recordkeeping requirements associated with maintaining records of ''batch tests.''

D. Laboratory Methods and Accreditation

At 40 CFR 82.5(i)(2)(ii), EPA currently provides an option to importers that want to repackage regulated substances that were initially either unlabeled or mislabeled to ''[v]erify the contents with independent laboratory testing results and affix a correct label on the container that matches the test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.'' But this requirement places no restrictions on what constitutes an ''independent laboratory'' nor on the quality of the analysis that the laboratory would have to achieve.

EPA is proposing to define ''laboratory testing'' as the use of the sampling and testing methodology prescribed by a laboratory that is accredited to ISO 17025. EPA is proposing this change to make clear that laboratory testing means, for purposes of 40 CFR part 84, the use of the methods specified (or incorporated by reference) in appendix A to 40 CFR 82, subpart F and EPA Method 18, where appropriate. This ensures that laboratory testing undertaken pursuant to the 40 CFR part 84 regulations uses a methodology that is consistent with the testing required for sales and distribution of HFCs, which will ensure consistency throughout the HFC regulatory environment. EPA is also proposing that laboratories must be accredited in order to be used for purposes of meeting the 40 CFR 84.5(i)(2)(ii) requirements. Laboratory accreditation bodies assess a variety of aspects of a laboratory, including the technical competence of staff; the validity and appropriateness of test methods; traceability of measurements and calibration to national standards; suitability, calibration, and maintenance of the testing environment; sampling, handling, and transportation of test items; and quality assurance of test and calibration data. In November 2017, International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) published a new version of the test laboratory accreditation standard, ISO/IEC 17025:2017. In addition to adding a definition of ''laboratory,'' the new version replaces certain prescriptive requirements with performance-based requirements and allows for greater flexibility in satisfying the standard's requirements for processes, procedures, documented information, and organizational responsibilities. Interested persons may purchase a copy of ISO/IEC 17025:2017 from the source provided in 40 CFR 84.37(b)(1), and it is available at *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.* This accreditation would ensure that laboratories follow good laboratory practices and that their operations have been reviewed by a recognized accreditation authority.

EPA is seeking comment on whether to require that all testing under 40 CFR 84.5(i)(3) be conducted by an independent and/or accredited laboratory. EPA understands that some entities have in-house laboratories and/or unaccredited laboratories that they currently rely upon for testing. Since the requirement for sampling and testing generally is in response to concerns about the potential for unlabeled or mislabeled container(s), the additional stringency of this requirement may be justified. However, EPA seeks comment on whether other safeguards are in place at laboratories that are currently typically used by this regulated community that are similar in nature to accreditation, such as certification by an independent third party, that would decrease the importance of testing being conducted by an independent and/or accredited laboratory.

EPA is also seeking comment on whether AHRI Certified Refrigerant Testing Laboratory and others should be allowed in addition to ISO 17025 laboratories. The AHRI certification program requires competence with the refrigerant testing requirements of appendix A, although the certification is not as rigorous as an ISO 17025 accreditation.

E. Certificate of Analysis for Imports of Regulated Substances

To aid in the review and monitoring of imports of HFCs, EPA is also proposing to require that certificates of analysis records accompany all imports of regulated substances. Under this proposal, certificates of analysis would include the sampling and testing that is used to verify the composition of bulk regulated substance(s) offered for sale or distribution, and the proposed definitions will facilitate this recordkeeping when batch testing is used to satisfy the labeling requirement. EPA understands that certificates of analysis regularly accompany imports of HFCs currently and does not expect this requirement to change current practices. If finalized, it would provide EPA additional information to confirm the number of allowances that need to be expended at the time of import. Under this proposal, EPA would require that the certificate of analysis be made available to EPA on the same timeline as the advance notice required under 40 CFR 84.31(c)(7).

EPA seeks comment on whether EPA should require that the certificate of analysis that is provided and testing and sampling conducted prior to import be conducted by a laboratory accredited under ISO 17025. For the same reasons described in the prior section of this preamble, this accreditation would ensure that laboratories follow good laboratory practices and that their operations have been reviewed by a recognized accreditation authority.

VIII. What other revisions is EPA proposing?

In addition to what is outlined in the prior sections, EPA is proposing a number of additional regulatory changes based on both lessons learned and current practices that have proved useful in implementing the HFC phasedown.

A. Define the Term ''Expend''

Under the AIM Act and EPA's implementation of the HFC phasedown, a person must expend allowances to produce or import regulated substances outside of limited exceptions. In the Framework Rule, EPA did not codify a regulatory definition of ''expend'' in 40 CFR 84.3. EPA proposes to amend 40 CFR 84.3 to include a definition of expend. EPA proposes to define expend to mean to subtract the number of allowances required for the production or import of regulated substances under 40 CFR part 84 from a person's unexpended allowances. We are proposing in section V.A of this preamble to codify the point in time that determines when calendar year allowances are expended, in section V.B of this preamble to codify that importers of record must expend allowances, and in section VI.B of this preamble to require same day recordkeeping of when producers and importers expend allowances that would be included in quarterly reports. EPA is proposing to add a regulatory definition of ''expend'' to accompany these proposed regulatory revisions to provide additional

specificity on how parties are required to implement these requirements.

B. Modify Labeling Requirements

EPA codified certain labeling requirements in 40 CFR 84.5(i)(1), to require a person who is selling, distributing, offering for sale or distribution, or importing containers containing a regulated substance that the container include ''a label or other permanent markings stating the common name(s), chemical name(s), or American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend.'' EPA is proposing several changes to this regulatory text to provide additional detail on requirements, both to enable more transparency into the movement of HFCs and to help enable implementation and enforcement, where appropriate. Having accurate labeling of containers of regulated substances allows EPA, CBP, and other enforcement officials to quickly identify containers of interest, understand the contents of those containers, and make decisions about whether further inspection is warranted.

EPA proposes revising 40 CFR 84.5(i)(1) to require a ''permanent label'' in place of ''a label or other permanent marking.'' In other regulatory programs, EPA has experienced situations where an entity has swapped out easily removable labels in anticipation of an upcoming inspection. During the phaseout of ODS, EPA is aware of instances where an importer would import cylinders labeled as containing HFCs (prior to enactment of the AIM Act), when in fact they contained regulated HCFCs. Shortly after import, the importer would relabel the cylinders and sell them as HCFCs in an attempt to circumvent the CAA prohibition on importing HCFCs without allowances. EPA is proposing to require a permanent label to avoid such situations and to prohibit tampering with the permanent label. EPA is soliciting comment on examples of situations where permanent labels may be appropriate and is also soliciting comment on what type of ''permanent marking'' may be available for use on the types of containers used for regulated substances that are consistent with other Federal requirements. EPA is also soliciting comment on whether there are reasons why regulated entities would benefit from the ability to use a ''permanent marking'' in place of a label. EPA is also soliciting comment on any implementation challenges associated with requiring a ''permanent label.'' EPA is also soliciting comment on any implementation challenges associated with requiring a ''permanent label.''

To ensure that the labeling requirements meet their intended purpose, EPA is also proposing to add more detail and specificity on the regulatory labeling requirements. EPA proposes to make changes to the existing regulatory text at 40 CFR 84.5(i)(1) to include the following features such that all marks must be:

- Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk HFC container;
- Readily visible and legible;
- Able to withstand open weather exposure without a substantial reduction in visibility or legibility;
- Displayed on a background of contrasting color; and
- If a container of regulated substances is contained within a box or other overpack, the exterior packaging must contain legible and visible information in at least 20-point font of what regulated substance is contained within.

These proposed revisions to the labeling requirements are intended to help ensure that all containers of regulated substances would contain labeling that is not easily manipulated, that would be easily visible and legible, and would contain information that is necessary for appropriate inspection and enforcement, as appropriate. As outlined in detail in the Framework Rule (86 FR 55166), the Agency has significant concerns about the potential for and impact of illegal trade in regulated substances. This concern is particularly heightened at the start of a new phasedown step. The requirements of the HFC phasedown are implemented at a variety of locations, including at border entries and industrial facilities. As a result, EPA relies on a diverse array of law enforcement officials to aid in compliance efforts related to the 40 CFR part 84 requirements. It is particularly important in light of these circumstances for EPA to strive to ensure a program that can be readily and efficiently implemented. Without appropriate labeling, containers of regulated substances may not be readily distinguishable from containers of other products. Accordingly, these proposed provisions would facilitate inspections by providing durable labels that clearly identify contents.

As a complementary measure to these additional labeling requirements, EPA is proposing to add to the prohibitions at 40 CFR 84.5(i)(2), that no one other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. EPA is proposing to change the current text, which applies to importers, to allow only for the importer of record to undertake these actions. This is intended to parallel the proposals elsewhere in this preamble that would permit only an importer of record to expend allowances for the import of bulk regulated substances. Additionally, the current regulatory text does not preclude relabeling; it only precludes repackaging. However, this regulatory text is intended to apply to regulated substances that were ''initially mislabeled or unlabeled.'' While it is important to provide restrictions in such situations on repackaging, it is equally important to speak to relabeling for a scenario where the regulated substances are not moved into a different container.

C. Clarify Ability To Move Allowances Among Companies With Certain Affiliation Without a Transfer

EPA made clear in the Framework Rule that in calculating the quantity of allowances to allocate, ''for purposes of determining the quantity of past imports, EPA is treating all companies majority owned and/or controlled by the same individual(s) as a single company, even if there is no corporate parent'' (86 FR 55145). EPA also considers all parent, [50] subsidiary,[51] sister,[52] and commonly owned [53] companies together in determining past imports. Complementarily, it is EPA's longstanding practice that allowances can be expended by parents, subsidiaries, sister, or commonly owned companies without a transfer. EPA is proposing to revise the regulatory text at 40 CFR 84.19(a) to codify this practice for additional clarity for allowance holders.

Given that EPA considers historic activity together for these companies in determining a single quantity of allowances to allocate, it is appropriate to allow companies in this situation to expend from the single pool of allowances through different arms of its corporate chain. Therefore, it seems

[50] In referring to a parent, EPA means a company that has a majority, *i.e.* at least fifty percent, stake in another company.

[51] In referring to a subsidiary, EPA means a company that is majority, *i.e.* at least fifty percent, owned by another company.

[52] In referring to a sister company, EPA means an entity related to another entity by a shared corporation with majority ownership.

[53] In referring to a commonly owned company, EPA means a company that is related to another company by a shared individual owner or owners, where there is at least (1) a single individual that owns 30 percent or more of each company or (2) individuals with direct family relationships (parent, child, sibling, or spouse) that own a majority of each company.

inappropriate to require a transfer, including a petition to the Agency and a transfer offset, when EPA considers these commonly owned companies as a single entity for purposes of calculating and allocating allowances. However, EPA invites comments on potential negative implications of this proposal. EPA requests comment on whether the proposed revisions to the text adequately capture the appropriate entities.

D. Revise Required Elements To Request Additional Consumption Allowances

In the Framework Rule EPA created a process by which a person may obtain consumption allowances equivalent to the quantity of regulated substances exported by that person. Given that the AIM Act subtracts exports in the definition of ''consumption'' under subsection (b)(3), it is consistent with the Act to refund consumption allowances that were expended to import or produce regulated substances if those regulated substances were later exported from the country. An exporter must submit certain information (40 CFR 84.17(a)) for EPA's review to verify that the regulated substances were in fact exported.

Through implementation of the existing 40 CFR 84.17 regulations, EPA has learned that the review of requests for additional consumption allowances (RACAs) could be more efficient if exporters provided additional information with their RACA requests. Specifically, EPA is proposing to require that RACA applicants submit the following additional data points: (1) Internal Transaction Numbers (ITNs) for all shipments regardless of monetary value, destination country, or other characteristics that could otherwise exempt or preclude an exporting entity from obtaining an ITN, (2) conveyance names, (3) IMOs of the vessel(s) carrying the export, as applicable and (4) container numbers (*e.g.,* ISO tank numbers). Inclusion of this additional information would aid EPA in verifying reported exports through CBP data. These proposed additional data points should help ensure that EPA can quickly locate exports and review RACA applications expeditiously. An ITN is received as confirmation that the Electronic Export Information (EEI) has been accepted in the Automated Export System (AES). EPA notes that there are some exports where an exporter is not required to receive an ITN. This may be the case for certain exports destined for Canada or valued under $2,500, for example. This proposal would require that all exports of regulated substances have associated EEI that is filed by way of AES, regardless of whether the exports are destined for Canada, under a low value threshold, or otherwise not required to have an ITN. EPA requests comment on whether there are any additional data points that would aid the Agency in quickly verifying the information provided in a RACA application, including but not limited to customs release documents from the country receiving the exports and proof of receipt at the final destination. EPA also requests comment on whether any entity that may apply for a RACA would have difficulty gathering and submitting the additional data points proposed here. EPA's understanding is that these data points appear on existing bills of lading, although the specific data points on a given bill of lading may differ by broker.

EPA is also taking comment on whether the Agency should require the reporting of certain EEI, which are data that must be filed through AES, to aid in EPA's review of RACAs and to verify export data more generally similar to those required (and proposed to be required) under 40 CFR 84.31(c)(7), such as cargo description, gross and net weight, unit of mass (*i.e.,* kilograms), HTS Code, container number(s) of the shipment (if applicable), vessel name and the IMO number, where applicable, CAS Number(s) of the regulated substance(s) imported and, for regulated substances that are in a mixture, either the ASHRAE numerical designation of the refrigerant or the percentage of the mixture containing each regulated substance.

Finally, while the current RACA requirements allow an entity to receive a refund on allowances for an export regardless of when the HFC was initially produced or imported, EPA is considering amending the regulations to require that exporters provide documentation to verify an allowance was expended when the regulated substance being exported was produced or imported. This could reduce the opportunity for an entity to illegally import an HFC, export it legally, and receive a legal consumption allowance, effectively allowing a bad actor to launder smuggled HFCs. It would also reduce the opportunity for entities to receive RACAs for stockpiled HFCs imported or produced prior to 2022. EPA noted its concern in the proposed Framework Rule that an entity could over produce or import high-GWP HFCs prior to January 1, 2022, and export them to gain additional allowances in later years. In the Framework Rule, EPA initially proposed that RACAs would only be available for regulated substances that were produced or imported in the same year as the export occurred, but did not finalize that time restriction noting that it could be unnecessarily prescriptive, cause challenges around the change in calendar year, and the challenges such a requirement would have for net exporters who are not allocated allowances at the start of the year since their historic consumption would be negative. EPA seeks comment on whether these reasons will still be valid by 2024 and also whether it is appropriate to finalize a requirement with some more flexible time-related restriction.

E. Petitions To Import Regulated Substances for Laboratory Testing with Eventual Destruction

EPA's regulations codified in 40 CFR 84.25(b) detail the process by which entities can import used regulated substances into the United States for destruction without expending allowances. The Framework Rule explained that used HFCs may need to be destroyed when they are contaminated beyond the point that reclamation is economical, and that providing a pathway to import used HFCs for proper disposal in the United States can benefit the environment and the domestic destruction industry (86 FR 55181). The Agency explicitly excluded importing virgin HFCs for disposal from the petition process, stating that ''Importing virgin HFCs, even for disposal, requires the expenditure of consumption allowances.''

In reviewing import activity, EPA has learned that some entities may import small amounts of regulated substances for laboratory testing to determine the type and amount of any impurities in the United States, after which point the substances are destroyed. In such situations the regulated substances are virgin material, but may not meet the exact specifications required by the producer or for the intended applications. The current regulations require allowances to be expended in these instances, as these materials are not used regulated substances. Even if these regulated substances could be considered used, there are no provisions in the current regulations to allow for an intermediary step (such as laboratory testing) prior to destruction without expending allowances.

Based on current information, EPA does not consider laboratory testing of regulated substances that are ultimately bound for destruction as meriting an exemption from expending allowances. EPA established a regulatory petition process for other situations where

regulated substances are imported without expending allowances, such as for feedstock uses or disposal by destruction. Those standardized processes provide a means for EPA to document shipments, verify that the intended functions are being carried out, and expedite reviews. In the case of laboratory testing with eventual destruction, the frequency, quantity, and number of potentially affected entities are not fully known, though the Agency does not believe that that they are sufficient enough in scale to necessitate a regulatory petition process for the entities to be exempt from expending allowances. The Agency currently lacks compelling reasons or rationale for why such testing cannot be performed in the country of use. Nonetheless, EPA is soliciting comment on whether a petition process like that in 40 CFR 84.25(b) would be appropriate and necessary, and on the number of entities that would potentially make use of a petition process as well as the frequency and quantity of such imports. If compelling comments are received demonstrating that these tests cannot be performed in the countries of use or that the scope of these activities warrant a regulatory petition process, EPA would consider finalizing a process as outlined further in this section.

Should EPA determine there is need for such a petition process, EPA is taking comment on whether a petition process should be provided, by which allowances would not be necessary for importing virgin or used regulated substances exclusively for laboratory testing for the type and quantity of impurities, where the regulated materials are ultimately bound for destruction.

Specifically, EPA is taking comment on a process for which imports of regulated substances could qualify if they are imported for laboratory testing and ultimately bound for destruction and are limited to 0.5 kg per shipment, and that a person must petition the Agency for the import of each individual shipment of a regulated substance that met these criteria in order to not expend allowances. If EPA were to determine such a process is needed, it is taking comment on including the following requirements in that process: a petition would be required at least 30 days before the shipment is to arrive at a U.S. port, containing the following information:

- Name, HTS code, and quantity in kilograms (limited to 0.5 kg) of each regulated substance to be imported;
- Name and address of the importer, the importer identification number, and the contact person's name, email address, and phone number;
- Name and address of the consignee and the contact person's name, email address, and phone number;
- Name and address of any intermediary who will hold the imported regulated substances for laboratory testing, and the contact person's name, email address, and phone number;
- Name and address of any intermediary who will hold the imported regulated substances for destruction, and the contact person's name, email address, and phone number;
- Source country;
- An English translation, if needed, of the export license (or application for an export license) from the appropriate government agency in the country of export;
- The U.S. port of entry for the import, the expected date of import, and the vessel transporting the material. If at the time of submitting the petition the importer does not know this information, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the relevant Agency official of this information prior to the entry of the individual shipment into the United States;
- Name, address, contact person, email address, and phone number of the responsible party at the laboratory testing facility;
- Name, address, contact person, email address, and phone number of the responsible party at the destruction facility;
- A certification from the importer attesting that prior to destruction, the regulated substances are only being imported for testing to determine the type and quantity of impurities with no other use;
- A certification from the laboratory conducting the testing that they will only distribute the regulated substances to the destruction facility specified in the petition after testing is complete and will send the regulated substances to the destruction facility within 60 days of receipt; and
- A certification from the destruction facility that they will destroy the regulated substance within 45 days of receipt.

EPA is further taking comment on using a review process, time by which the regulated substances must be destroyed, quantity (in MTEVe) limits, proof of destruction requirements, and recordkeeping provisions for the petition process described above in this section, that would be similar to those currently codified in 40 CFR 84.25 (b)(2)–(6). Finally with respect to this petition process, the Agency is taking comment on requiring that the laboratory performing the purity testing submit to EPA information demonstrating and confirming that the regulated substances have been delivered to a destruction facility in accordance with approved technologies in 40 CFR 84.29 within 15 calendar days of the destruction facility receiving the regulated substances.

IX. What are the costs and benefits of this proposed action?

In the Framework Rule, EPA conducted a Regulatory Impact Analysis (RIA) which estimated the costs and benefits of implementing the phasedown of HFCs as a result of the passage of the AIM Act, as realized by promulgating that rule. This action proposes to follow an allocation methodology and framework nearly identical to that rule, and this action is not expected to result in significant changes to the phasedown program as a whole or fundamentally change the assumptions made in the RIA. As described in this preamble, we are proposing to adjust the consumption baseline, revise particular recordkeeping and reporting requirements, and carry out other limited revisions to the existing regulations. These revisions would generally apply from the years 2024 and beyond. In this section we discuss two discrete changes to the analysis of benefits and costs as presented in the RIA for the Framework Rule. First, we are providing an analysis of the incremental change in benefits and costs associated with the proposed adjustment to the consumption baseline from 2024 through 2050 relative to the benefits and costs estimate for the same time period as estimated in the supporting analysis for the Framework Rule. Secondly and separately, we have adjusted estimated costs associated with the HFC phasedown from 2024 through 2050 due to updating assumptions for an abatement option used in the analysis.

This analysis is intended to provide the public with updated information on the relevant costs and benefits of this action and to comply with Executive Orders. The analysis does not form a basis or rationale for any of the actions EPA is proposing in this rulemaking. The Framework Rule, its RIA, and supporting documentation provide more detail on our analysis methodology of the costs and benefits of the HFC phasedown between 2022 and 2050, and are available in the docket for this action (Docket ID No. EPA–HQ–OAR–

2022–0430). More information on the analysis for this action is available in an addendum to the Framework Rule's RIA in the docket for this action.

As discussed in section IV of this preamble, this rule proposes to reduce the consumption baseline by 3.6 million metric tons of exchange value equivalent (MMTEVe) (approximately 1.2 percent) relative to the baseline codified in the Framework Rule at 40 CFR 84.7(b)(2). With a lower consumption baseline, more abatement will be necessary in each year starting in 2024 to reduce HFC consumption from its business-as-usual level to a level below the maximum allowed consumption. However, for the years 2029 through 2035, the abatement options modeled previously using the higher baseline had already lowered consumption below the maximum consumption allowed. This ''overshoot'' reached a level of consumption that is already below the maximum consumption that would be allowed with the lowered baseline, so no additional abatement options are needed in these years and no incremental costs are accrued. More detail is provided in the RIA addendum for this rule. Assuming EPA finalizes the proposed change, using the same abatement option approach as used in the Framework Rule RIA, we estimate consumption will decrease relative to the business-as-usual forecast by an additional 22.3 MMTEVe through 2050 (*i.e.,* 7,183 MMTEVe compared with the previous estimate of 7,160 MMTEVe).

Reducing the consumption of HFCs reduces the emissions of HFCs, although the time profile of emissions reduction can vary depending on the application the HFCs are used in because consumption in some applications, *e.g.,* aerosols, may result in an immediate emissions release, while others, *e.g.,* closed-cell foams, emit the HFCs used to produce them over many years. Thus, the percentage reduction in a discounted stream of consumption may not match the percentage reduction in a discounted stream of emissions. EPA's Vintaging Model is used to calculate consumption and emissions under a ''business-as-usual'' forecast and an alternative scenario in which the AIM Act allowance allocation phasedowns are in effect and abatement options are undertaken. The difference results in the reduction in consumption as well as the reduction of emissions of HFCs in each year. The 2024–2050 total reduction in emissions of regulated HFCs from the proposed reduction in the consumption baseline is estimated to be 2 MMTEVe fewer relative to the previous estimate from the Framework Rule. By multiplying the change in emissions of each HFC in each year by the social cost of HFCs for that HFC for that year, the monetary value of the climate benefits of the emissions reduction can be estimated. These reductions in HFC consumption, emissions, and associated climate benefits, are all attributable to the baseline adjustment. From 2024 through 2050 at a discount rate of 3 percent in 2020 dollars and discounted to 2022, this proposed baseline adjustment would result in incremental climate benefits of $125 million, costs of $1.2 billion, and a net cost of $1.1 billion. Relative to the present value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050, this increase represents a 0.4 percent decrease in cumulative net benefits. Although EPA is using the social costs of HFCs for purposes of this analysis, this proposed action does not rely on the estimates of these costs as a record basis for the Agency action, and EPA would reach the proposal conclusion even in the absence of the social costs of HFCs.

EPA also updated an abatement option used in the analysis to reflect the most recently available information. Specifically, the previous analysis assumed that some consumption of HFC–134a could be abated by transitioning the foam-blowing agent used to produce extruded polystyrene (XPS) boardstock foam. If XPS foam producers shifted from using a combination of HFC–134a and carbon dioxide to a mixture of liquid carbon dioxide (LCD) and alcohol, all of the HFC consumption associated with producing XPS foam could be avoided. However, EPA received comment from two foam manufacturers that the abatement option of using LCD/alcohol has not been proven to meet the safety and performance standards required in the United States and would not be a viable option. While the LCD/alcohol technology is successfully used in other countries, we understand that U.S. companies expect XPS foam production to transition from using HFC-34a/CO_2 to blends containing a hydrochlorofluoroolefin (HCFO) and/or a hydrofluoroolefin (HFO). This revision of an abatement option did not result in any changes to the emissions or benefits, because these options are applied to reduce consumption to the respective phasedown step. The updated assumption resulted in a cost increase of $2.7 billion from 2024–2050 at a 3 percent discount rate relative to the prior estimate provided with the Framework Rule RIA. The effect is a one percent change in the estimated net benefit of the HFC phasedown in 2022–2050. This revision solely reflects a change in assumptions. It is not the result of a regulatory change and does not reflect a change in costs from actions proposed in this rule. EPA requests comment on this assumption, including on the modeled transition and estimated cost, and other transition scenarios described in the RIA addendum in the docket.

For informational purposes, considering the incremental change to the consumption baseline associated with this proposed rule and the separate update to the analytical model described further in the addendum in the docket for this rulemaking, the present value of cumulative net benefits for the HFC Allocation Program between 2022 and 2050 is now estimated to be $268.9 billion.

X. How is EPA considering environmental justice?

As part of the RIA addendum for this proposed rule, EPA updated the environmental justice analysis that was previously conducted for the Framework Rule. The updated environmental justice analysis used the same analytical approach used previously, along with updated data on cancer and respiratory risks. The analysis also includes the addition of another facility that reported HFC production. Furthermore, as described in section VI.D of this preamble, EPA is also proposing to require that HFC production facilities report annual emissions of HAP, ODS, and HFCs from their HFC production lines.

Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) establish Federal executive policy on environmental justice. Executive Order 12898's main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on people of color and low-income populations in the United States. EPA defines environmental justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws,

regulations, and policies.[54] Meaningful involvement means that: (1) Potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public's contribution can influence the regulatory Agency's decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.[55] The term ''disproportionate impacts'' refers to differences in impacts or risks that are extensive enough that they may merit Agency action. In general, the determination of whether there is a disproportionate impact that may merit Agency action is ultimately a policy judgment which, while informed by analysis, is the responsibility of the decision-maker. The terms ''difference'' or ''differential'' indicate an analytically discernible distinction in impacts or risks across population groups. It is the role of the analyst to assess and present differences in anticipated impacts across population groups of concern for both the baseline and proposed regulatory options, using the best available information (both quantitative and qualitative) to inform the decision-maker and the public.[56]

A regulatory action may involve potential environmental justice concerns if it could: (1) Create new disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; (2) exacerbate existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples; or (3) present opportunities to address existing disproportionate impacts on people of color, low-income populations, and/or indigenous peoples through the action under development.

Executive Order 14008 calls on agencies to make achieving environmental justice part of their missions ''by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts.'' Executive Order 14008 further declares a policy ''to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and under-investment in housing, transportation, water and wastewater infrastructure, and health care.'' In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to ''take into account the distributional consequences of regulations, including as part of a quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.'' EPA also released its June 2016 ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis'' (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.

In the Framework Rule, EPA established the baselines for the production and consumption of regulated substances, determined the quantity of allowances that would be available nationwide according to the AIM Act's phasedown schedule, and created an allowance allocation and trading program. EPA also summarized the public health and welfare effects of GHG emissions (including HFCs), including findings that certain parts of the population may be especially vulnerable to climate change risks based on their characteristics or circumstances, including the poor, the elderly, the very young, those already in poor health, the disabled, those living alone, and/or indigenous populations dependent on one or limited resources due to factors including but not limited to geography, access, and mobility (86 FR 55124–55125). Potential impacts of climate change raise environmental justice issues. Low-income communities can be especially vulnerable to climate change impacts because they tend to have more limited capacity to bear the costs of adaptation and are more dependent on climate-sensitive resources such as local water and food supplies. In corollary, some communities of color, specifically populations defined jointly by both ethnic/racial characteristics and geographic location, may be uniquely vulnerable to climate change health impacts in the United States.

EPA has not assessed climate-based impacts to communities that surround HFC production facilities for this rule or as part of the Framework Rule. The location of HFC production facilities has no significant bearing on the climate impacts that these communities will experience.

As detailed in the Framework Rule and its accompanying RIA, the phasedown of HFCs in the United States will achieve significant benefits associated with reducing climate change. However, as described in the RIA for the Framework Rule and in the addendum for this proposed rule, there continues to be significant uncertainty about how the phasedown of HFC production, the issuance of allowances, and market trends independent of this proposed rulemaking could affect production of HFCs and HFC substitutes—and associated air pollution emissions—at individual facilities, particularly in communities that are disproportionately burdened by air pollution. The manner in which producers transition from high-GWP HFCs could drive changes in future risk for communities living near facilities that produce HFCs, to the extent the use of toxic feedstocks, byproducts, or catalysts changes and those chemicals are released into the environment with adverse local effects.

For the environmental justice analysis performed to support the Framework Rule, as a starting point for assessing the need for a more detailed environmental justice analysis, EPA reviewed the available evidence from the published literature and from community input on what factors may make population groups of concern more vulnerable to adverse effects (*e.g.,* cumulative exposure from multiple stressors), including but not limited to the 2009 and 2016 Endangerment Findings and the reports from IPCC, the U.S. Global Change Research Program, and the National Research Council. It was also important to evaluate the data and methods available for conducting an environmental justice analysis.

EPA's 2016 Technical Guidance does not prescribe or recommend a specific approach or methodology for conducting an environmental justice analysis, though a key consideration is consistency with the assumptions underlying other parts of the regulatory analysis when evaluating the baseline

[54] See, *e.g.,* ''Environmental Justice.'' *Epa.gov,* EPA, 4 Mar. 2021, *www.epa.gov/environmentaljustice.*

[55] The criteria for meaningful involvement are contained in EPA's May 2015 guidance document ''Guidance on Considering Environmental Justice During the Development of an Action.'' *Epa.gov,* EPA, 17 Feb. 2017, *www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action.*

[56] The definitions and criteria for ''disproportionate impacts,'' ''difference,'' and ''differential'' are contained in EPA's June 2016 guidance document ''Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.'' *Epa.gov,* EPA, *https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.*

and regulatory options. Where applicable and practicable, the Agency's RIA examined certain metrics for an environmental justice analysis comprising more than just climate change effects, including: the proximity of entities receiving allowances to populations disaggregated by race and ethnicity, low-income populations, and/or indigenous peoples; the number of entities receiving allowances that may be adversely affecting population groups of concern; the nature, amounts, and location of regulated HFC production that may adversely affect population groups of concern; and potential exposure pathways associated with the production of the regulated HFCs or with chemicals used as feedstocks, catalysts, or byproducts of HFC production unique to particular populations (*e.g.,* workers). The environmental justice analysis is described in the RIA for the Framework Rule and is based on public data from the TRI, GHGRP, EJSCREEN (an environmental justice mapping and screening tool developed by EPA), Enforcement and Compliance History Online (ECHO), and Census data. In addition, the analysis integrated suggestions received during the public comment period to the extent possible. The environmental justice analysis also contains information on non-production releases (as defined by TRI), water releases, and offsite disposal for chemicals used in HFC production. The analysis of potential environmental justice concerns focused mainly on characterizing baseline emissions of air toxics that are also associated with chemical feedstock use for HFC production. As noted in the RIA for the Framework Rule, there is uncertainty around the role that HFC production plays in emissions of these air toxics. In addition, EPA conducted a proximity analysis to examine community characteristics within one and three miles of these facilities. The Agency also explored larger radii (5 and 10 miles) in response to public comments that releases from these facilities may travel longer distances.

The relatively small number of facilities directly affected by this rule enabled EPA to assemble a uniquely granular assessment of the characteristics of these facilities and the communities where they are located. The environmental justice analysis, which examines racial and economic demographic and health risk information, found heterogeneity in community characteristics around individual facilities. The analysis showed that the total baseline cancer risk and total respiratory risk from air toxics (not all of which are due to emissions from HFC production) varies, but is generally higher, and in some cases much higher, within one to ten miles of an HFC production facility. The analysis also found that higher percentages of both low-income and Black or African American individuals live near several HFC production facilities compared with the appropriate national and state level average. EPA noted in the final rulemaking, and reiterates here, that it is not clear the extent to which these baseline risks are directly related to HFC production, but some feedstocks, catalysts, and byproducts are toxic, particularly with respect to potential carcinogenicity (*e.g.,* carbon tetrachloride, tetrachloroethylene, and trichloroethylene). All HFC production facilities are near other industrial facilities that could contribute to the AirToxScreen cumulative cancer and respiratory risk; the number of neighboring TRI facilities within one mile of an HFC production facility ranges from 2 to 14, within 3 miles there are 2 to 19 neighboring TRI facilities, within 5 miles there are 2 to 34 neighboring TRI facilities, and within 10 miles there are 6 to 66 neighboring TRI facilities.

At this time, it is not clear how emissions related to HFC production compare to other chemical production at the same or nearby facilities. Additionally, some HFC alternatives, such as hydrofluoroolefins (HFOs), use the same chemicals as feedstocks in their production or release the same chemicals as byproducts, potentially raising concerns about local exposure. Emissions from production facilities manufacturing non-fluorinated substitutes (*e.g.,* hydrocarbons, ammonia) could also be affected by the phasedown of HFCs. However, there is still limited information regarding how much of each substitute would be produced, which substitutes would be used, and what other factors might affect production and emissions at those locations, so it continues to be unclear to what extent this rule may affect baseline risks from hazardous air toxics for communities. Further, the HFC phasedown schedule prescribed by Congress—with a 40 percent reduction by 2024, a 70 percent reduction by 2029, an 80 percent reduction by 2034 and an 85 percent reduction by 2036—may also reduce the potential for a facility to increase emissions above current levels for a prolonged period, if at all.

For this proposed rulemaking, EPA is updating the environmental justice analysis that was done as part of the Framework Rule. Not much time has elapsed since this rule was signed last September, and the Agency still does not have enough data to determine how the implementation of the HFC phasedown may affect production and emissions at facilities that produce HFCs and their substitutes. For this reason, EPA is following the analytical approach used in the Framework Rule RIA to provide updated data on the total number of TRI facilities near HFC production facilities and the cancer and respiratory risks to surrounding communities. This update includes the use of the most recent data available for the AirToxScreen data set from 2017, replacing the 2014 NATA data used in the previous analysis. Additionally, EPA is updating the list of HFC production facilities as part of this analysis to include an additional ninth facility that reported production of HFCs in 2022.

Finally, EPA is including a demonstration of a microsimulation approach to analyze the proximity of communities to potentially affected HFC production facilities. Microsimulation is a technique relying upon advanced statistics and data science to combine disparate survey and geospatial data. It has long been used in a variety of economic and social science research and has been used before by EPA (in the context of understanding the implications of underground storage tank impacts on groundwater). Recent advances in data science and computational power have increased the availability of microsimulation for applications such as environmental justice analysis. The demonstration analysis included in the RIA addendum contributes to understanding communities that may warrant further environmental justice analysis.

The updated environmental justice analysis found that for eight of the nine facilities identified as HFC producers, the demographic data are identical to that included in the Framework Rule RIA. The racial, ethnic, and income figures for the 8 communities within 1, 3, 5, and 10 miles of the respective facilities are drawn from the most recent American Communities Survey data from 2019. Using the updated 2017 AirToxScreen data, the total cancer risk and total respiratory risk generally decreased compared with the previous analysis for the communities surrounding several production facilities. The exception is the apparent rise in total cancer risk within one mile of the Mexichem Fluor facility in St. Gabriel, LA. The total cancer risk identified using the 2014 NATA data was 180 per million at a one-mile

radius. Using the 2017 AirToxScreen dataset, the total cancer risk rises within one mile of the facility to 200 per million. However, further from the facility, the total cancer risk was lower using the updated 2017 AirToxScreen data compared with that identified using the 2014 NATA data. In particular, the total cancer risk drops to 130 per million from 140 per million within the three-mile radius, 120 per million from 140 per million within the five-mile radius, and further to 82 per million from 98 per million within the 10-mile radius. The total respiratory risk near the facility appears lower using the new data. Additionally, looking across the nine HFC production facilities, the risks from air emissions (not all of which necessarily stem from HFC production), while varied, were still generally higher, and in some cases much higher, within one to three miles of an HFC production facility and compared with the overall national and state averages.

For the additional ninth facility, Islechem, the total cancer risk and total respiratory risk within 1 to 10 miles of the facility were similar to or lower than the risks based on the national and state average. The proportion of low-income and Black or African American and other communities of color were lower than the national and state averages and increased with increasing distance from this facility.

As mentioned above in this section, emissions from facilities producing fluorinated and non-fluorinated substitutes may also be affected by the phasedown of HFCs. For the forthcoming proposed technology transitions rulemaking under the AIM Act, EPA is conducting an environmental justice analysis to assess the potential impacts of that proposed rule by examining the characteristics of communities near facilities producing HFC substitutes (*e.g.,* hydrocarbons, CO_2, ammonia, HFOs) used in the sectors or subsectors addressed in the petitions. More information will be provided in conjunction with that proposed rule, which the Agency anticipates publishing later this year.

EPA seeks input on the environmental justice analysis contained in the RIA addendum for this proposed rule, as well as broader input on other health and environmental risks the Agency should assess. To support the development of comments, EPA is seeking data or analysis to identify whether it is reasonable to expect net increases in emissions, and if so how we might isolate the impacts of this program (*e.g.,* effects resulting from the phasedown itself, the trading of production allowances, or some other factor) that would enable the Agency to conduct a more nuanced analysis of changes in releases associated with chemical feedstocks and byproducts for HFC substitutes, given the inherent uncertainty regarding where, and in what quantities, substitutes will be produced.

EPA seeks comment and further discussion of the use of microsimulation approaches and techniques for regulatory impact analysis and other program activities. For example, what microsimulation tools are appropriate for better understanding the burdens faced by communities, and in what circumstances? The demonstration analysis presented in this RIA addendum uses a dataset of ''synthetic households'' based on geospatial data combined through microsimulation techniques with information from the U.S. Decennial Census and the American Communities Survey (ACS). What other surveys or other geospatial datasets should be the focus of EPA efforts to combine with the ACS and/or Decennial Census data? How can microsimulation tools supplement other EPA tools for understanding demographics, multiple burdens facing communities, and assessing the impact of EPA programs? Can microsimulation and other techniques to use current survey information be used to identify data gaps which might be filled with refinements or improvements to existing survey tools?

For the final rule, EPA is also considering updating the analysis to estimate exposure of the communities near the identified facilities to toxics using the Risk Screening Environmental Index Geographic Microdata (RSEI–GM). The Agency seeks comment on whether updating the analysis provided with the Framework Rule would be useful and what additional insight it might provide for the environmental justice analysis.

EPA is taking comment on whether the proposal to require annual reporting of certain emissions, as described in more detail above in section VI.D of this preamble, would allow for the effective monitoring of these emissions and their localized impacts of the HFC phasedown on surrounding communities. EPA is also taking comment on whether there are other authorities that would allow for the reporting of emissions tied to HFC and HFC substitute production. Finally, EPA is seeking comment in order to aid our efforts to understand further cumulative impacts and how they might be addressed. Since the updated environmental justice analysis and proposed reporting requirement are focused on chemical stressors, the Agency is requesting additional information on how both the chemical and non-chemical stressors associated with the HFC phasedown can alter the cumulative impacts experienced by communities surrounding HFC production facilities, how the Agency can share this information with the public, and whether and how the Agency can assess and measure cumulative impacts in the context of the HFC phasedown.

XI. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. A summary of the potential costs and benefits associated with this action is included in the section titled, ''What are the costs and benefits of this proposed action?'' of this proposed rulemaking, and EPA prepared an analysis of the potential costs and benefits associated with this action, which is available in Docket ID No. EPA–HQ–OAR–2022–0430.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to OMB under the PRA. The ICR document that EPA prepared has been assigned EPA ICR number 2685.03 and proposes to revise OMB Control No. 2060–0734. You can find a copy of the ICR in the docket for this rule (Docket ID. No. EPA–HQ–OAR–2022–0430), and it is briefly summarized here.

Subsection (d)(1)(A) of the AIM Act specifies that on a periodic basis, but not less than annually, each person that, within the applicable reporting period, produces, imports, exports, destroys, transforms, uses as a process agent, or reclaims a regulated substance shall submit to EPA a report that describes, as applicable, the quantity of the regulated substance that the person: produced, imported, and exported; reclaimed; destroyed by a technology approved by the Administrator; used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or, used as a process agent. EPA collects such data regularly to support implementation of the AIM Act's HFC

phasedown provisions. EPA requires quarterly reporting to ensure that annual production and consumption limits are not exceeded. It is also needed for EPA to be able to review allowance transfer requests, of which remaining allowances is a major component of EPA's review. In addition, EPA collects information in order to calculate allowances, to track the movement of HFCs through commerce, and to require auditing. Collecting these data elements allows EPA to ensure that the annual quantity of all regulated substances produced or consumed in the United States does not exceed the cap established by the AIM Act, consistent with subsection (e)(2)(B) of the Act. As described above in this preamble, EPA proposes revisions to the recordkeeping and reporting requirements and new requirements, including annual reporting of estimated emissions from HFC production facilities and recordkeeping of analysis results on regulated substances.

All information sent by the submitter electronically is transmitted securely to protect information that is CBI or claimed as CBI consistent with the confidentiality determinations made in the Framework Rule. The reporting tool guides the user through the process of submitting such data. Documents containing information claimed as CBI must be submitted in an electronic format, in accordance with the recordkeeping requirements.

For reference, EPA continued to use data collected under the ICR for the GHGRP (OMB Control No. 2060–0629) as well as the associated reporting tool, the e-GGRT in developing this proposed rulemaking. EPA also earlier requested an emergency ICR for a one-time collection request pertaining to data necessary to establish the U.S. consumption and production baselines as well as to determine potential producers, importers, and application-specific end users who were not subject to the GHGRP (OMB Control No. 2060–0732). EPA is not revising either ICR through this proposed rule.

Respondents/affected entities: Respondents and affected entities will be individuals or entities that produce, import, export, transform, distribute, destroy, or reclaim certain HFCs that are defined as a regulated substance under the AIM Act. Respondents and affected entities will also be individuals and entities who produce, import, or export products in six statutorily specified applications: a propellant in metered dose inhalers; defense sprays; structural composite preformed polyurethane foam for marine and trailer use; the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector; mission-critical military end uses, such as armored vehicle and shipboard fire suppression systems and systems used in deployable and expeditionary applications; and, on board aerospace fire suppression.

Respondent's obligation to respond: Mandatory (AIM Act).

Estimated number of respondents: 10,195.

Frequency of response: Quarterly, biannual, annual, and as needed depending on the nature of the report.

Total estimated burden: 57,617 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $7,765,111 per year, includes $817,607 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to EPA using the docket identified at the beginning of this rule. EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than January 3, 2023.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action include those that may produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. EPA estimates that approximately 32 of the 279 potentially affected small businesses could incur costs in excess of one percent of annual sales and that approximately 28 small businesses could incur costs in excess of three percent of annual sales. Because there is not a significant number of small businesses that may experience a significant impact, it can be presumed that this action will have no SISNOSE. Details of this analysis are presented in ''*Economic Impact Screening Analysis for Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years.*'' (Docket ID EPA–HQ–OAR–2022–0430).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribes on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and has shared information on this rulemaking through this and other fora.

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

This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is an economically significant regulatory action as defined by Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health and welfare effects of climate change on children.

GHGs, including HFCs, contribute to climate change. The GHG emissions reductions resulting from implementation of this rule would further improve children's health. The assessment literature cited in EPA's

2009 and 2016 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects. The assessment literature since 2016 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience.

These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses, and mental health effects resulting from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with heat waves, storms, and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households. More detailed information on the impacts of climate change to human health and welfare is provided in section I.C of this preamble.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action applies to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act (NTTAA) and Incorporation by Reference

This action involves a technical standard. EPA is proposing to require laboratory testing be conducted by a laboratory that is accredited to ISO 17025 and accordingly is incorporating by reference ISO/IEC 17025:2017, ''General requirements for the competence of testing and calibration laboratories'', Third Edition, November 2017. ISO/IEC 17025:2017 specifies general requirements for competence, impartiality, and consistent operation of laboratories. The standard is applicable to all organizations performing laboratory activities, regardless of the number of personnel. This standard is available for purchase from Techstreet at 3025 Boardwalk Drive, Suite 220, Ann Arbor, MI 48108; tel.: 855.999.9870; email: *store@techstreet.com;* website: *http://www.techstreet.com/,* or *https://www.techstreet.com/standards/iso-iec-17025-2017?product_id=2000100.* The cost of an electronic copy of ISO 17025:2017 is approximately $162. The cost of obtaining this accreditation standard is not a significant financial burden for laboratories. Therefore, EPA concludes that the ISO 17025 standard being incorporated by reference is reasonably available.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that it is not feasible to determine whether this action has disproportionately high and adverse effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This rule would continue to reduce emissions of potent GHGs, which as noted earlier in section I of this preamble will reduce the effects of climate change, including the public health and welfare effects on overburdened and underserved communities, including low-income communities and communities of color, and/or indigenous peoples. At the same time, the Agency recognizes that phasing down the production of HFCs may cause significant changes in the location and quantity of production of both HFCs and their substitutes, and that these changes may in turn affect emissions of HAP at chemical production facilities. EPA carefully evaluated available information on HFC production facilities and the characteristics of nearby communities to evaluate these impacts. In the Framework Rule, EPA also solicited comment on whether these changes pose risks to communities with environmental justice concerns and what steps, if any, should be taken either under the AIM Act or under EPA's other statutory authorities to address any concerns that might exist. Based on EPA's analysis, EPA finds evidence of environmental justice concerns near HFC production facilities from cumulative exposure to existing environmental hazards in these communities. Given uncertainties about which and in what quantities HFC substitutes will be produced, EPA cannot determine how this rule would affect existing disproportionate adverse effects on communities of color and low-income people as specified in Executive Order 12898. However, the Agency is proposing to require additional reporting on emissions from HFC production facilities and is taking comment on its revised analysis for this rule. A summary of the Agency's approach for considering potential environmental justice concerns as a result of this rulemaking can be found in section X of this preamble, and our environmental justice analysis can be found in the RIA addendum, available in the docket for this rulemaking.

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Incorporation by Reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set out in the preamble, EPA proposed to amend 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

Subpart A—[Amended]

■ 2. Amend § 84.3 by adding the definitions ''batch'', ''berth'', ''certificate of analysis'', ''commonly owned'', ''expend'', ''laboratory testing'', ''majority owned'', and ''representative sample'' in alphabetical order to read as follows:

§ 84.3 Definitions.

* * * * *

Batch means a vessel, container, or cylinder from which a producer, importer, reclaimer, recycler, or repackager transfers regulated substances directly for sale or distribution, or for repackaging for sale or distribution; or a population of small vessel(s), container(s), or cylinder(s) that a producer, importer, reclaimer, recycler, or repackager directly offers for sale or distribution.

Berth means to moor a ship in its allotted place at a wharf or dock.

* * * * *

Certificate of Analysis means a document that certifies the contents of an import meets recognized specifications following sampling and testing methodology in appendix A to 40 CFR part 82 and the testing methodology in appendix A to 40 CFR part 82 or EPA Method 18 for the

appropriate regulated substance or mixture of regulated substances.

* * * * *

Commonly Owned: An entity that is related to another entity by a shared individual natural person(s), where either (a) there is at least a single individual that owns 30 percent or more of each entity or (b) individuals that share a direct family relationship (parent, child, sibling, or spouse) own a majority of each entity.

* * * * *

Expend means to subtract the number of allowances required for the production or import of regulated substances under this part from a person's unexpended allowances.

* * * * *

Laboratory testing means the use of the sampling and testing methodology prescribed in § 84.5(i)(c) by a laboratory that is accredited to ISO 17025 (incorporated by reference, see § 84.37).

Majority owned means when a corporate entity has at least a fifty percent stake in another entity.

* * * * *

Representative sample means a sample collected from a container offered for sale or distribution using a sampling method that obtains all components of regulated substance(s) in an unbiased and precise manner; and a sample that can be used to infer that the composition of regulated substance(s) in a population of containers offered for sale or distribution that constitute, or are derived from, the batch, are within stated tolerances.

* * * * *

■ 3. Amend § 84.5 by:

■ a. In (b)(1), adding ''either as a single component or a multicomponent substance,'' before the word ''except'';

■ b. Revising paragraph (b)(1)(i);

■ c. In (b)(1)(iii), removing ''or''

■ d. In (b)(1)(iv), replacing ''.'' with ''; or''

■ e. Adding paragraphs (b)(1)(v) and (vi);

■ f. Redesignating (b)(2) through (b)(6) as paragraphs (b)(3) through (b)(7) and adding a new paragraph (b)(2);

■ g. Revising the newly redesignated paragraph (b)(3); and

■ h. Revising paragraphs (d) and (i).

The additions and revisions read as follows:

§ 84.5 Prohibitions relating to regulated substances.

* * * * *

(b) * * *

(1) * * *

(i) If the importer of record possesses at the time they are required to submit reports to EPA pursuant to § 84.31(c)(7), and expends at the time of ship berthing for vessel arrivals, border crossing for land arrivals such as trucks, rails, and autos, and first point of terminus in U.S. jurisdiction for arrivals via air, consumption or application-specific allowances in a quantity equal to the exchange-value weighted equivalent of the regulated substances imported, whether present as a single component or a multicomponent blend. The required amount of allowances must be calculated to the tenth, but a minimum expenditure of 0.1 allowances is required for any import of regulated substances;

(A) The calendar year of the expended allowances must be for the same calendar year in which the ship containing regulated substances berthed for sea arrivals, at the border crossing for land arrivals, or in which an air arrival first reached its point of terminus in U.S. jurisdiction;

(B) [Reserved]

* * * * *

(v) In the case of a heel when the precise quantity is unknown or has not been measured prior to import, if the importer of record expends, at the time of the import, consumption or application-specific allowances in a quantity equal to 10 percent of the total potential volume of the container in exchange value-weighted equivalent terms for the regulated substance contained therein.

(vi) All imports pursuant to paragraphs (b)(1)(i) or (v) of this section must be accompanied by a certificate of analysis.

(2) No person may attempt to land bulk regulated substances on, bring regulated substances into, or introduce regulated substances into, any place subject to the jurisdiction of the United States without meeting one of the categories set forth in § 84.5(b)(1).

(3) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (b)(1) of this section, unless they can demonstrate that the importer of record possessed and expended allowances in accordance with the requirement outlined in (b)(1)(i) or (v) or another party who meets the definition of an importer met one of the exceptions set forth in (b)(1)(ii) through (iv) of this section.

* * * * *

(d) *Calendar-year allowances.* All production, consumption, and application-specific allowances may only be expended for production or import occurring in the calendar year for which the allowances are allocated (*i.e.,* January 1 through December 31). No person may expend, transfer, or confer a production, consumption, or application-specific allowance after December 31 of the year for which it was issued. Entities may transfer or confer their production, consumption, or application-specific allowances before January 1 of the calendar year for which the allowances were allocated.

* * * * *

(i) *Labeling.* (1) As of January 1, 2022, no person may sell or distribute, offer for sale or distribution, or import containers containing a regulated substance that lacks a permanent label stating the common name(s), chemical name(s), or ASHRAE designation of the regulated substance(s) or blend contained within, and the percentages of the regulated substances if a blend. Removing or tampering with this permanent label is prohibited. The permanent label must be:

(i) Durable and printed or otherwise labeled on, or affixed to, the external surface of the bulk regulated substance container;

(ii) Readily visible and legible;

(iii) Able to withstand open weather exposure without a substantial reduction in visibility or legibility;

(iv) Displayed on a background of contrasting color; and

(v) If a container of a regulated substances is contained within a box or other overpack, the exterior packaging must contain legible and visible information in at least 20-point font of what regulated substance is contained within.

(2) No person other than the importer of record may repackage or relabel regulated substances that were initially unlabeled or mislabeled. In order to repackage the regulated substances, the importer must either:

(i) Expend consumption allowances equal to the amount of allowances that would be required if each cylinder were full of HFC-23; or

(ii) Verify the contents with independent laboratory testing results and affix a correct label on the container that matches the lab-verified test results before the date of importation (consistent with the definition at 19 CFR 101.1) of the container.

(3)(i) No person producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances may sell or distribute, or offer for sale or distribution, regulated substances without first testing a representative sample of the regulated substances that they are producing, importing, reclaiming, recycling for fire suppression, or repackaging to verify

that the composition of the regulated substance(s) matches the container labeling using the sampling and testing methodology prescribed in 40 CFR part 82, subpart F appendix A for regulated substances offered for sale and distribution as refrigerants and using the following testing method for regulated substances offered for non-refrigerant uses:

TABLE 1 TO PARAGRAPH (d)(3)(i)—NON-REFRIGERANT REGULATED SUBSTANCE TESTING METHODS

Regulated substance	Testing method
HFC-23, HFC-134, HFC-125, HFC-143a, HFC-41, HFC-152a	Part 7 of *2008 Appendix C for Analytical Procedures For AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC-134a, HFC-143, HFC-245fa, HFC-32, HFC-152	Part 9 of *2008 Appendix C for Analytical Procedures For AHRI Standard 700–2014,* incorporated by reference in 40 CFR part 82, subpart F, appendix A.
HFC-227ea, HFC-236cb, HFC-236ea, HFC-236fa, HFC-245ca, HFC-365mfc, HFC-43-10mee.	EPA Method 18; Appendix A–6 to 40 CFR part 60—Test Methods 16 through 18.

(ii) No person may sell or distribute, or offer for sale or distribution, regulated substances as a refrigerant that do not meet the specifications in appendix A to 40 CFR part 82, subpart F—Specifications for Refrigerants that are applicable to that regulated substance or mixture containing regulated substance(s). For persons who are producing, importing, reclaiming, recycling for fire suppression, or repackaging regulated substances, the applicable specifications must be verified using the sampling and testing methodology prescribed in appendix A to 40 CFR part 82, subpart F.

* * * * *

■ 4. Amend § 84.7 by

■ a. In (b)(2), removing ''303,887,017'' and adding in its place ''300,257,386''; and

■ b. Revising the table in paragraph (b)(3).

The addition and revision read as follows:

§ 84.7 Phasedown schedule.

* * * * *

(b) * * *

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)

Year	Total production (MTEVe)	Total consumption (MTEVe)
(i) 2022–2023	344,299,157	273,498,315
(ii) 2024–2028	229,532,771	180,154,432
(iii) 2029–2033	114,766,386	90,077,216
(iv) 2034–2035	76,510,924	60,051,477
(v) 2036 and thereafter	57,383,193	45,038,608

■ 5. Amend § 84.9 by:

■ a. In paragraph (a) introductory text, add ''2022 and 2023'' after the words ''calendar year''; and

■ b. Redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§ 84.9 Allocation of calendar-year production allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances, the relevant Agency official will issue, through a separate notification, calendar year production allowances to entities that produced a regulated substance in 2021 or 2022, or both 2021 and 2022. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 production allowances is calculated as follows for each entity:

(1) Take the average of the three highest annual exchange value-weighted production amounts that each eligible entity reported to the Agency for calendar years 2011 through 2019;

(2) Sum every entity's average values determined in paragraph (b)(1) of this section and determine each entity's percentage of that total;

(3) Determine the amount of general pool production allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the production cap in § 84.7(b)(3);

(4) Determine individual entities' production allowance quantities by multiplying each entity's percentage determined in (b)(2) of this section by the amount of general pool allowances determined in (b)(3) of this section.

* * * * *

■ 6. Amend § 84.11 by:

■ a. In paragraph (a) introductory text, add ''2022 and 2023'' after the words ''calendar year''; and

■ b. Removing paragraph (c), redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b).

The addition reads as follows:

§ 84.11 Allocation of calendar-year consumption allowances.

* * * * *

(b) Starting with the allocation of 2024 calendar years allowances the relevant Agency official will issue, through a separate notification, calendar year consumption allowances. The allocation of calendar year 2024, 2025, 2026, 2027, and 2028 consumption allowances is calculated as follows for each entity:

(1) For new market entrants that were allocated allowances pursuant to § 84.15(e)(3), take the allowances allocated for calendar year 2023 and divide that value by the proportion of calendar year 2023 consumption allowances received by general pool allowance holders pursuant to paragraph (a) of this section relative to their high three average calculated pursuant to paragraph (a)(2) of this section;

(2) For entities that produced or imported a regulated substance in 2021 or 2022, or both 2021 and 2022, and have not been allocated allowances pursuant to § 84.15(e)(3), the relevant Agency official will calculate and issue allowances to a single entity if multiple importers are related through shared corporate or common ownership. The relevant Agency official will take the average of the three highest annual exchange value-weighted consumption amounts, which for entities related through shared corporate or common ownership or control would be aggregated and averaged at the corporate or common ownership level, that each eligible entity reported to the Agency for calendar years 2011 through 2019;

(3) If an entity has a value calculated under (b)(1) of this section and (b)(2) of this section, take the single higher value;

(4) Sum every entity's values as determined in (b)(1), (2), and (3) of this section and determine each entity's percentage of that total;

(5) Determine the amount of general pool consumption allowances by subtracting the quantity of application-specific allowances for that year as determined in accordance with § 84.13 from the consumption cap in § 84.7(b)(3);

(6) Determine individual entities' consumption allowance quantities by multiplying each entity's percentage determined in (b)(3) of this section by the amount of general pool allowances determined in (b)(4) of this section.

■ 7. Amend § 84.17 by:

■ a. Revising paragraphs (a)(8) and (9).

■ b. Adding paragraphs (a)(10) through (13).

The revisions and additions read as follows:

§ 84.17 Availability of additional consumption allowances.

* * * * *

(a) * * *

(8) A copy of the bill of lading and the invoice indicating the net quantity (in kilograms) of regulated substances shipped and documenting the sale of the regulated substances to the purchaser;

(9) The Harmonized Tariff Schedule codes of the regulated substances exported;

(10) Internal Transaction Numbers for all shipments;

(11) Conveyance names;

(12) International Maritime Organization number of the marine vessel(s) carrying the export, if applicable; and

(13) Container numbers.

* * * * *

■ 8. Amend § 84.19 by adding paragraph (a)(5) to read as follows:

§ 84.19 Transfers of allowances.

(a) * * *

(5) An entity does not need to follow the procedures in this paragraph to expend allowances possessed by another entity that is majority owned by it, it majority owns, related to it through majority ownership, or commonly owned with it.

* * * * *

■ 9. Amend § 84.25 by revising paragraph (a)(1)(v) to read as follows:

§ 84.25 Required processes to import regulated substances as feedstocks or for destruction.

(a) * * *

(1) * * *

(v) The U.S. port of entry for the import, the expected date of import, and the vessel transporting the material. If at the time of submitting the petition the importer does not know this information, and the importer receives a non-objection notice for the individual shipment in the petition, the importer is required to notify the relevant Agency official of this information prior to the date of importation (consistent with the definition at 19 CFR 101.1) of the individual shipment into the United States;

* * * * *

■ 10. Amend § 84.31 by:

■ a. Revising paragraphs (b)(2)(i), (ii), (iii), (ix), (x), and adding paragraph (b)(2)(xi);

■ b. Redesignating (b)(3) through (5) as paragraphs (b)(4) through (6) and adding a new paragraph (b)(3);

■ c. Revising newly designated paragraph (b)(4)(xi);

■ d. Redesignating (b)(4)(xiv) through (b)(4)(xv) as paragraphs (b)(4)(xv) through (b)(4)(xvi) and adding a new paragraph (b)(4)(xiv);

■ e. In paragraph (c)(1) adding ''record of'' after ''importer of'';

■ f. Redesignating (c)(1)(ix) as (c)(1)(x) and adding a new paragraph (c)(1)(ix);

■ g. Redesignating paragraphs (c)(2)(xvii) through (xix) as paragraphs (c)(2)(xviii) through (xx) and adding a new paragraph (c)(2)(xvii);

■ h. In newly redesignated paragraph (c)(2)(xix) adding '', including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review'' after ''distribution'';

■ i. In paragraph (c)(3)(i)(D) adding ''(consistent with the definition at 19 CFR 101.1)'' after ''date of importation'';

■ j. Revising paragraph (c)(7);

■ k. Adding paragraphs (c)(9), (10), and (11);

■ l. Revising paragraph (i)(4)(i);

■ m. Revising paragraph (j)(3); and

■ n. Redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k).

The additions and revisions read as follows:

§ 84.31 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their transformation by the producer; for any regulated substance that is used in processes resulting in their transformation at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for transformation by a second party;

(ii) The quantity (in kilograms) of production of each regulated substance used in processes resulting in their destruction by the producer; for any regulated substance that is used in processes resulting in their destruction at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for destruction by a second party;

(iii) The quantity (in kilograms) of production of each regulated substance used as a process agent by the producer; for any regulated substance that is used as a process agent at a facility that differs from the facility of production, but both facilities are owned by the producer, the name, quantity (in kilograms), and recipient facility of each regulated substance; and the quantity (in kilograms) intended for use as a process agent by a second party;

(ix) A list of the entities conferring application-specific allowances from whom orders were placed, and the quantity (in kilograms) of specific regulated substances produced for those listed applications;

* * * * *

(x) Daily dated records required to be maintained pursuant to paragraph (b)(4)(xiv) of this section of the quantity of allowances expended for the production of regulated substances for all dates falling within the reported quarter and a certification that such allowances were expended on the specified date; and

(xi) For the fourth quarter report only, the quantity of each regulated substance held in inventory on December 31.

(3) *Annual report.* Within 45 days after the end of the fourth quarter, each producer of a regulated substance must provide to the relevant Agency official a report of emissions on a regulated substance production line and emissions unit basis for each facility that produces regulated substances. This report must contain the following:

(i) Quantity (in pounds) of each of the following emitted in the prior calendar year on a regulated substance production line basis: hazardous air pollutants initially identified in section 112 of the CAA, and as revised through rulemaking and codified in 40 CFR part 63; regulated substances listed in Appendix A to 40 CFR part 84; and ozone-depleting substances listed in appendix F of 40 CFR part 82, subpart A; and

(ii) Quantity (in pounds) of each such substance listed in paragraph (b)(3)(i) of this section emitted in the prior calendar year on an emission unit basis from each regulated substance production line.

(4) * * *

(xi) Dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review;

* * * * *

(xiv) On any day allowances are expended for the production of regulated substances, record, on that same day, the date, quantity, and type of allowances expended.

* * * * *

(c) * * *

(1) * * *

(ix) Daily dated records required to be maintained pursuant to (2)(xvii) of this paragraph of the quantity of allowances expended for the import of regulated substances for all dates falling within the reported quarter and a certification that such allowances were expended on the specified date.

* * * * *

(2) * * *

(xvii) On any day allowances are expended for the import of regulated substances, record on that same day, the date, quantity, and type of allowances expended.

* * * * *

(7) *Additional reporting for importers.* The importer of record, or their authorized agent, must include the following no later than 14 days if arriving by marine vessel or 5 days for non-marine vessel prior to the date of importation (consistent with the definition at 19 CFR 101.1), via a U.S. Customs and Border Protection-authorized electronic data interchange system, such as the Automated Broker Interface:

(i) Cargo Description;

(ii) Net weight, or if importing a heel when the precise quantity is unknown or has not been measured, the number equivalent to net weight if the volume of the container was 10 percent full;

(iii) Container number(s), as applicable;

(iv) Vessel name, for maritime shipments;

(v) International Maritime Organization number, for maritime shipments;

(vi) Gross Weight, or if importing a heel when the precise quantity is unknown or has not been measured, the number equivalent to gross weight if the volume of the container was 10 percent full;

(vii) Weight Unit of Measure;

(viii) Port of Entry;

(ix) Scheduled Entry Date;

(x) Harmonized Tariff Schedule (HTS) code;

(xi) Harmonized Tariff Schedule (HTS) Description;

(xii) Origin Country;

(xiii) Importer Name and Importer Number;

(xiv) Consignee Entity Name;

(xv) CAS Number(s) of the regulated substance(s) imported and, for regulated substances that are in a mixture, either the ASHRAE numerical designation of the refrigerant or the percentage of the mixture containing each regulated substance;

(xvi) If importing regulated substances for transformation or destruction, a copy of the non-objection notice issued consistent with § 84.25;

(xvii) If importing regulated substances as a transhipment, a copy of the confirmation documenting the importer reported the transhipment consistent with paragraph (c)(3)(i) of this section; and

(xviii) A certificate of analysis.

* * * * *

(9) *Importer of record information.* (i) Any entity that falls under any of the following criteria must submit the information outlined in paragraph (c)(9)(ii) of this section:

(A) That anticipates being the importer of record for a shipment of regulated substances must, by November 15 of the prior calendar year; or

(B) That is not issued allowances by EPA, but receives transferred or conferred allowances must, within 15 calendar days of receiving a non-objection notice for conferral of application-specific allowances pursuant to § 84.13(h) or for inter-company transfer of consumption allowances pursuant to § 84.19(a).

(ii) The following information must be submitted to EPA by the date specified under paragraph(c)(9)(i) of this section:

(A) Names of all subsidiaries,

(B) Entities commonly owned or majority owned by the same person or persons,

(C) Alternative names under which the entity does business,

(D) Importer of record numbers, and

(E) If providing information under (b)(9)(i)(A), (B), or (C) of this section:

(*1*) the relationship between the allowance holder and each subsidiary and each entity commonly owned or majority owned by the same person or persons, including alternative names under which each listed entity does business;

(*2*) if applicable, the identity of owners and their respective percentage of ownership; and

(*3*) The quantity and type of allowances to be expended in the calendar year by each affiliated entity, identified by name and importer of record number(s).

(iii) If changes occur to the information previously provided to the Agency, such changes must be transmitted to the Agency at least 21 days prior to expenditure of allowances pursuant to § 84.5(b)(1)(i).

(10) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (c)(1) of this section, unless they can demonstrate that the importer of record fulfilled the requirements in paragraph (c)(1) of this section.

(11) Each person meeting the definition of importer for a particular regulated substance import transaction is jointly and severally liable for a violation of paragraph (c)(7) of this section, unless they can demonstrate that the importer of record or the importer of record's authorized agent fulfilled the requirements of paragraph (c)(7) of this section.

* * * * *

(i) * * *

(4) * * *

(i) Reclaimers must maintain records, by batch, of the results of the analysis conducted to verify that reclaimed regulated substance meets the necessary specifications in appendix A to 40 CFR part 82, subpart F (based on AHRI

Standard 700–2016), including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review. Such records must be maintained for five years.

* * * * *

(j) * * *

(3) *Recordkeeping.* (i) Recyclers must maintain records of the names and addresses of persons sending them material for recycling and the quantity of the material (the combined mass of regulated substance and contaminants) by regulated substance sent to them for recycling. Such records must be maintained on a transactional basis for five years.

(ii) Recyclers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(k) *Repackagers.* Persons who transfer regulated substances, either alone or in a mixture, from one container to another container prior to sale or distribution or offer for sale or distribution must comply with the following recordkeeping requirements:

(1) *Recordkeeping.* Repackagers must maintain dated records of batch tests of regulated substances packaged for sale or distribution, including instrument calibration, sample testing data files, and results summaries of both sample test results and quality control test results that are in a form suitable and readily available for review.

(2) [Reserved]

* * * * *

■ 11. Add § 84.37 to read as follows:

§ 84.37 Incorporation by Reference.

(a) Certain material is incorporated by reference into this subpart part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at EPA and at the National Archives and Records Administration (NARA). Contact EPA at: U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the source(s) in the following paragraphs of this section.

(b) International Organization for Standardization (ISO), Chemin de Blandonnet 8, CP 401—1214 Vernier, Geneva, Switzerland; tel.: + 41 22 749 01 11; fax: + 41 22 733 34 30; email: *central@iso.org;* website: *www.iso.org.*

(1) ISO/IEC 17025:2017 (ISO 17025), ''General requirements for the competence of testing and calibration laboratories'', Third Edition, November 2017; IBR approved for § 84.3.

(2) [Reserved]

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Part III

Securities and Exchange Commission

17 CFR Part 240
Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–96034; File No. S7–19–21]

RIN 3235–AM76

Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to the recordkeeping rules applicable to broker-dealers, security-based swap dealers, and major security-based swap participants. The amendments modify requirements regarding the maintenance and preservation of electronic records, the use of third-party recordkeeping services to hold records, and the prompt production of records. The Commission also is designating broker-dealer examining authorities as Commission designees for purposes of certain provisions of the broker-dealer record maintenance and preservation rule.

DATES:

Effective date: January 3, 2023.

Compliance date: The compliance date for the amendments to 17 CFR 240.17a–4 is May 3, 2023. The compliance date for the amendments to 17 CFR 240.18a–6 is November 3, 2023.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Raymond Lombardo, Assistant Director, at 202–551–5755; Joseph I. Levinson, Senior Special Counsel, at (202) 551–5598; or Timothy C. Fox, Branch Chief, at (202) 551–5687, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending:

Commission Reference	CFR citation
Rule 17a–4	17 CFR 240.17a–4.
Rule 18a–6	17 CFR 240.18a–6.

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I. Introduction

A. Background

Securities Exchange Act of 1934 (''Exchange Act'') Rule 17a–4 (''Rule 17a–4'') [1] sets forth record maintenance and preservation requirements applicable to broker-dealers, including broker-dealers also registered as security-based swap dealers (''SBSDs'') or major security-based swap participants (''MSBSPs'').[2] Exchange Act Rule 18a–6 (''Rule 18a–6'') [3] sets forth record maintenance and preservation requirements for SBSDs and MSBSPs that are not also registered as broker-dealers (''SBS Entities'').[4] Rule 18a–6 was modeled on Rule 17a–4.[5] Pursuant to Sections 15F and 17(a) of the Exchange Act, in 2021, the Commission proposed amendments to Rules 17a–4 and 18a–6.[6] Specifically, the Commission proposed to amend the electronic record maintenance and preservation requirements of Rules 17a–

[1] *See* 17 CFR 240.17a–4.

[2] As used in this release, the term ''broker-dealer'' includes a broker-dealer that is also registered as an SBSD or MSBSP.

[3] *See* 17 CFR 240.18a–6.

[4] As used in this release, the term ''SBS Entity'' refers to an SBSD and MSBSP that is *not* also registered as a broker-dealer.

[5] *See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers,* Exchange Act Release No. 87005 (Sept. 19, 2019), 84 FR 68550, 68562–71 (Dec. 16, 2019) (''SBSD/MSBSP Recordkeeping Adopting Release''); *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers,* Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25211–20 (May 4, 2014) (''SBSD/MSBSP Recordkeeping Proposing Release'').

[6] *See Electronic Recordkeeping Requirements for Broker-Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants,* Exchange Act Release No. 93614 (Nov. 18, 2021), 86 FR 68300 (Dec. 1, 2021) (''Proposing Release''). Section 17(a) of the Exchange Act, in pertinent part, provides the Commission with authority to issue rules requiring broker-dealers to make and keep for prescribed periods such records as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78q(a). Section 15F(f)(1)(B)(i) of the Exchange Act provides that SBSDs and MSBSPs for which there is a prudential regulator shall keep books and records of all activities related to their business as an SBSD or MSBSP in such form and manner and for such period as may be prescribed by the Commission by rule or regulation. *See* 15 U.S.C. 78o–10(f)(1)(B)(i). Section 15F(f)(1)(B)(ii) of the Exchange Act provides that SBSDs and MSBSPs without a prudential regulator shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation. *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

4 and 18a–6 and the prompt production of records requirements of those rules.[7] The Commission received comment letters in response to the proposed amendments.[8] The Commission is adopting the proposed amendments with certain modifications in response to comments.[9]

B. Overview of the Final Rule Amendments and Designation

Rule 17a–4 currently requires a broker-dealer to notify its designated examining authority (''DEA'') before employing an electronic recordkeeping system.[10] The amendments to the rule eliminate this requirement.[11]

Rule 17a–4 currently requires a broker-dealer to maintain and preserve electronic records exclusively in a non-rewriteable, non-erasable format (also known as a write once, read many (''WORM'') format). The amendments to Rule 17a–4 add an audit-trail alternative to the WORM requirement.[12] Under the audit-trail alternative, a broker-dealer will need to use an electronic recordkeeping system that maintains and preserves electronic records in a manner that permits the recreation of an original record if it is modified or deleted. Currently, Rule 18a–6 does not require an SBS Entity to use an electronic recordkeeping system that meets either the audit-trail or the WORM requirement. The amendments to Rule 18a–6 require an SBS Entity without a prudential regulator (''nonbank SBS Entity'') to maintain and preserve electronic records using an electronic recordkeeping system that meets either the audit-trail or the WORM requirement.[13] Thus, under the amendments to Rules 17a–4 and 18a–6, a broker-dealer or nonbank SBS Entity that elects to use an electronic recordkeeping system will need to ensure that such electronic recordkeeping system meets either the audit-trail requirement or the WORM requirement.

Rule 17a–4 currently requires a broker-dealer to engage a third party who has access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium under the rule. The third party must execute, and file with its DEA, written undertakings agreeing to, among other things, promptly furnish to the Commission and other securities regulators the information necessary to download records kept on the electronic storage media to any medium acceptable under Rule 17a–4. The amendments to Rule 17a–4 modify the form of the undertakings to make them more technology neutral and to provide an alternative to engaging a third party to perform this function.[14] Under the alternative, a broker-dealer can designate an executive officer to execute the undertakings if the executive officer has access to and the ability to provide records maintained and preserved on the broker-dealer's electronic recordkeeping system either directly or through a specialist who reports directly or indirectly to the executive officer. Further, the executive officer can appoint in writing up to two employees who are direct or indirect reports to fulfill the executive officer's obligations if the executive officer is unable to fulfill those obligations. The employees must have the same ability as the executive officer to independently access and provide the records either directly or through a specialist who reports directly or indirectly to them. In addition, the designated executive officer can appoint in writing up to three specialists to assist in fulfilling the executive officer's obligations. Rule 18a–6 currently does not have either a third-party or executive officer undertakings requirement. The amendments to Rule 18a–6 add the third-party undertakings provision and alternative executive officer undertakings provision to the rule and require those undertakings to be filed with the Commission.[15] Thus, under the amendments to Rules 17a–4 and 18a–6, a broker-dealer or SBS Entity that elects to use an electronic recordkeeping system must have either a third party or an executive officer provide the written undertakings.

Rules 17a–4 and 18a–6 require a third party who prepares or maintains the regulatory records of a broker-dealer or SBS Entity (regardless of whether the records are in paper or electronic form) to file a written undertaking with the Commission signed by a duly authorized person.[16] The undertaking must include a provision whereby the third party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

Some broker-dealers and SBS Entities maintain their electronic recordkeeping systems and associated electronic records on servers or other storage devices that are owned or operated by a third party (*e.g.,* a cloud service provider) while the broker-dealer or SBS Entity retains control of the electronic recordkeeping system and access to the electronic records preserved on the system. Consequently, the third parties state that they cannot provide the undertaking required under Rules 17a–4 and 18a–6.

The Commission is amending Rules 17a–4 and 18a–6 to address this development in electronic recordkeeping practices.[17] Under the amendments, the third party may provide an alternative undertaking in lieu of the traditional undertaking that is tailored to how certain recordkeeping services, including cloud service providers, hold electronic records for broker-dealers and SBS Entities. The use of this alternative undertaking is subject to certain conditions, including that the records are maintained on an electronic recordkeeping system and the broker-dealer or SBS Entity has independent access to the records meaning, among other things, the broker-dealer can access the records without the need of any intervention of the third party.

[7] *See* paragraph (f) of Rule 17a–4 and paragraph (e) of Rule 18a–6 (setting forth the electronic record preservation requirements) and paragraph (j) of Rule 17a–4 and paragraph (g) of Rule 18a–6 (setting forth the prompt production of records requirements).

[8] The comment letters are available at *https://www.sec.gov/comments/s7-19-21/s71921.htm.*

[9] *See* paragraphs (f), (i), and (j) of Rule 17a–4, as amended; paragraphs (e), (f), and (g) of Rule 18a–6, as amended.

[10] *See* paragraph (f)(2)(i) of Rule 17a–4. Rule 18a–6 does not have a similar requirement.

[11] *See* section II.C. of this release (discussing these amendments in more detail).

[12] *See* section II.D.2. of this release (discussing these amendments in more detail).

[13] *See* section II.D.2. of this release (discussing these amendments in more detail).

[14] *See* section II.E.6. of this release (discussing these amendments in more detail). The Commission proposed to eliminate the third-party undertakings requirement of Rule 17a–4 and replace it with a senior officer undertakings requirement, and to add a parallel senior officer undertakings requirement to Rule 18a–6. *See* Proposing Release, 86 FR at 68310. For the reasons discussed in section II.E.6. of this release, the Commission is retaining the third-party undertakings provision in Rule 17a–4, as amended, to serve as an alternative to an executive officer undertakings requirement, and adding both the third-party undertakings requirement and the alternative executive officer undertakings requirement to Rule 18a–6, as amended.

[15] *See* section II.E.6. of this release (discussing these amendments in more detail).

[16] This undertaking requirement is designed to address access to broker-dealer or SBS Entity records when they are held by a person other than the broker-dealer or SBS Entity and regardless of whether the records are in paper form, stored on micrographic media, or stored on an electronic recordkeeping system. It is separate from the third-party or executive officer undertakings requirements discussed above, which are designed to address access to records preserved and maintained on an electronic recordkeeping system irrespective of whether they are held by a third party.

[17] *See* section II.G. of this release (discussing these amendments in more detail).

Consequently, the alternative undertaking cannot be used if the records maintained and preserved by the third party are not maintained and preserved by means of an electronic recordkeeping system (*e.g.,* it cannot be used if the records are in paper form). It also cannot be used if the broker-dealer or SBS Entity must rely on the third party to take an intervening step to make the records available to the broker-dealer or SBS Entity (*e.g.,* it cannot be used if the broker-dealer or SBS Entity must ask the third party to transfer copies of the records to the broker-dealer or SBS Entity or must ask the third party to first decrypt the records before they can be accessed).

In the alternative undertaking, which must be filed with the Commission, the third party must, among other things, acknowledge that the records are the property of the broker-dealer or SBS Entity and that the broker-dealer or SBS Entity has represented to the third party that the broker-dealer or SBS Entity: (1) is subject to rules of the Commission governing the maintenance and preservation of certain records; (2) has independent access to the records maintained by the third party; and (3) consents to the third party fulfilling the obligations set forth in the undertaking. Further, the third party must undertake to facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Commission as permitted under the law. In the case of a broker-dealer, the third party must also undertake to facilitate within its ability, and not impede or prevent, a trustee appointed under the Securities Investor Protection Act of 1970 (''SIPA'') to liquidate the broker dealer in accessing, downloading, or transferring the records as permitted under the law.[18]

Rules 17a–4 and 18a–6 require a broker-dealer or SBS Entity, respectively, to furnish promptly to a representative of the Commission legible, true, complete, and current copies of the records required to be maintained and preserved under the rules and any other records subject to examination. The amendments to Rules 17a–4 and 18a–6 require the broker-dealer or SBS Entity to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system in a reasonably usable electronic format, if requested by a representative of the Commission.[19] This means the record will need to be produced in an electronic format that is compatible with commonly used systems for accessing and reading electronic records.

The following table summarizes the electronic recordkeeping amendments to Rules 17a–4 and 18a–6.

Provision	Rule 17a–4	Rule 18a–6		
		Current	As amended	Current
DEA Notification	Required	No longer required	Not required	Not required.
WORM	Required	WORM or audit-trail required.	Not required	WORM or audit-trail required for nonbank SBS Entities.
3rd Party Undertaking Regarding Electronic Records.	Required	3rd Party or executive officer undertaking required.	Not required	3rd Party or executive officer undertaking required.
Produce Electronic Records in a Reasonably Useable Format.	Not required	Required	Not required	Required.
Alternative Undertaking for Cloud Service Providers.	Not permitted	Permitted	Not Permitted	Permitted.

Finally, various provisions of Rule 17a–4 refer to representatives or *designees* of the Commission. For example, an outside entity serving as a record custodian for a broker-dealer or SBS Entity must execute an undertaking agreeing to permit examination of the records by representatives or *designees* of the Commission as well as to promptly furnish hard copies of the records to the representatives and *designees.* The Commission is designating a broker-dealer's examining authorities as Commission designees for the purposes of these provisions of Rule 17a–4.[20]

II. Final Amendments

A. Introductory Text

The electronic recordkeeping provisions of Rule 17a–4 are set forth in paragraph (f) of the rule (''Rule 17a–4(f)''). The introductory text of Rule 17a–4(f) provides, in pertinent part, that the records required to be maintained and preserved pursuant to 17 CFR 240.17a–3 (Rule 17a–3) and Rule 17a–4 (''Broker-Dealer Regulatory Records'') may be immediately produced or reproduced on ''micrographic media'' or by means of ''electronic storage media'' that meet the conditions set forth in the rule and be maintained and preserved for the required time in that form. The term ''micrographic media'' refers to microfilm, microfiche, or any similar medium.[21] The electronic recordkeeping provisions of Rule 18a–6 are set forth in paragraph (e) of the rule (''Rule 18a–6(e)''). The introductory text of Rule 18a–6(e) provides, in pertinent part, that the records required to be maintained and preserved pursuant to 17 CFR 240.18a–5 (Rule 18a–5) and Rule 18a–6 (''SBS Entity Regulatory Records'') may be immediately produced or reproduced by means of an ''electronic storage system'' that meets the conditions set forth in the rule and be maintained and preserved for the required time in that form.[22] Rule 18a–

[18] SBS Entities are not members of the Securities Investor Protection Corporation (''SIPC'') and, therefore, are not eligible to be liquidated under SIPA.

[19] *See* section II.H. of this release (discussing these amendments in more detail).

[20] *See* section III of this release (discussing this designation). The Commission is not making a similar designation with respect to Rule 18a–6 because SBS Entities are not members of a self-regulatory organization (''SRO'') and, therefore, do not have an SRO that serves as an examining authority.

[21] *See* paragraph (f)(1)(i) of Rule 17a–4 (defining the term ''micrographic media'').

[22] The use of the phrase ''electronic storage system'' throughout Rule 18a–6 was intended to clarify that the rule does not require a particular storage medium such as an optical disk or CD–ROM. *See* Proposing Release, 86 FR at 68303; SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 86568.

6(e) does not provide a micrographic media option.[23]

Rule 17a–4(f) was adopted in 1997.[24] The Commission intended Rule 17a–4(f) to be technology neutral but was guided by the predominant electronic storage method at that time: using optical platters, CD–ROMs, or DVDs (collectively, ''optical disks'').[25] Therefore, the requirements of the rule contemplated the use of optical disks to a certain degree.

The Commission proposed amendments to Rule 17a–4(f), including to the rule's introductory text, to make the rule more technology neutral.[26] For example, the Commission proposed to replace the phrase ''electronic storage media'' with the phrase ''electronic recordkeeping system'' throughout the rule, including in the introductory text. The Commission also proposed a conforming amendment to Rule 18a–6(e) to replace the phrase ''electronic storage system'' with the phrase ''electronic recordkeeping system'' throughout the rule, including in the introductory text.

As discussed next, commenters addressed the proposal's use of the term ''electronic recordkeeping system'' and its proposed definition. Otherwise, commenters did not address the proposed amendments to the introductory text of Rules 17a–4(f) and 18a–6(e) and the Commission is adopting them substantially as proposed.[27]

B. Definition of Electronic Recordkeeping System

Paragraphs (f)(1)(i) and (ii) of Rule 17a–4 and paragraph (e)(1) of Rule 18a–6 currently define the terms ''micrographic media'', ''electronic storage media,'' and ''electronic storage system'', respectively. Paragraph (f)(1)(ii) of Rule 17a–4 defines the term ''electronic storage media'' as, in pertinent part, any digital storage medium or system that meets the requirements of the rule. Similarly, paragraph (e)(1) of Rule 18a–6 defines the term ''electronic storage system'' as, in pertinent part, any digital storage system that meets the requirements of the rule.

The Commission proposed to replace the terms ''electronic storage media'' and ''electronic storage system'' in Rules 17a–4(f) and 18a–6(e), respectively, with the term ''electronic recordkeeping system''.[28] The Commission proposed to define the new term in both rules as ''a system that preserves records in a digital format and that requires a computer to access the records.'' [29]

One commenter stated that the proposed definition was ''appropriately generic to survive foreseeable technological changes and will provide broker-dealers the flexibility to employ solutions that are innovative, efficient and/or cost-effective while still meeting the requirements of Rule 17a–4(f).'' [30] Another commenter expressed broad support for the proposal to update references to ''electronic storage media'' to the ''more generally applicable term'' ''electronic recordkeeping system.'' [31] Other commenters, however, suggested modifications to the term and definition. Two commenters suggested replacing the term ''electronic recordkeeping system'' with the term ''electronic recordkeeping.'' [32] One commenter stated that the definition should not use the word ''system'' because ''it implies the expectation of a physical and specified grouping of hardware and software rather than a system of supervision undertaken by a Regulated Entity to ensure records are maintained.'' [33] The commenter stated that ''any definition of electronic recordkeeping system should consider non-technological elements, such as assigning roles and responsibilities to key individuals and groups.'' [34]

The intent in defining ''electronic recordkeeping system'' was to refer to the technological means by which records are stored in digital form and accessed and retrieved without specifying a specific type of technology.[35] This is because the proposed amendments were structured so that paragraphs (f)(2) and (e)(2) of Rules 17a–4 and 18a–6, respectively, set forth the technical requirements for the electronic recordkeeping system.[36] Paragraphs (f)(3) and (e)(3) of Rules 17a–4 and 18a–6, respectively, set forth requirements for broker-dealers and SBS Entities that use electronic recordkeeping systems (*i.e.,* requirements that were not intrinsic to the electronic recordkeeping system). Commenters suggested using the term ''electronic recordkeeping'' to encompass more than the technological means by which the records are stored in digital form and accessed and retrieved.[37] However, using the broader term ''electronic recordkeeping'' would not be consistent with the objective of differentiating the requirements in paragraphs (f)(2) and (e)(2) of Rules 17a–4 and 18a–6 (which set forth technical requirements applicable to the electronic recordkeeping system itself) from the requirements of paragraphs (f)(3) and (e)(3) of Rules 17a–4 and 18a–6 (which set forth requirements *for firms* using an electronic recordkeeping system). For these reasons, Rules 17a–4 and 18a–6, as amended, use the term ''electronic recordkeeping system.''

One commenter recommended that if the term ''electronic recordkeeping system'' is retained, the Commission alter the definition of the term ''to eliminate the word 'computer,' which may not be technologically neutral in the future.'' [38] A second commenter expressed agreement with and support for this suggestion, and recommended ''the use of technology neutral terms to allow the proposed rules to be and remain relevant to current technologies and continued innovation.'' [39]

An objective of the proposed amendments to Rules 17a–4 and 18a–6 was to make them more technology neutral.[40] Accordingly, the definition of ''electronic recordkeeping system'' in Rules 17a–4 and 18a–6 is being modified to eliminate the reference to a ''computer'' as recommended by the commenters. In particular, the definition replaces the concept that an electronic recordkeeping system is a

[23] Rule 18a–6 does not include a micrographic media option because it was believed that SBS Entities would not choose to use that technology to preserve electronic records. *See* Proposing Release, 86 FR at 68303; SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 86568 n.200; SBSD/MSBSP Recordkeeping Proposing Release, 79 FR at 25219.

[24] *See Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934,* Exchange Act Release No. 38245 (Jan. 31, 1997), 62 FR 6469 (Feb. 12, 1997) (''Rule 17a–4(f) Adopting Release''). *See also Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934,* Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092 (July 15, 1993) (proposing Rule 17a–4(f)).

[25] *See* Rule 17a–4(f) Adopting Release, 62 FR at 6470.

[26] *See* Proposing Release 86 FR at 68303.

[27] *See* introductory text of paragraph (f) of Rule 17a–4, as amended; introductory text of paragraph (e) of Rule 18a–6, as amended. To improve readability, the phrase ''subject to the conditions set forth in this paragraph'' has been moved to the beginning of the introductory text of both paragraphs. *Id.*

[28] *See* Proposing Release, 86 FR at 68304.

[29] *Id.*

[30] *See* letter from John Gebauer, President, National Regulatory Services, Jan. 6, 2022 (''NRS Letter'').

[31] *See* letter from John Trotti, NCC Group, Dec. 29, 2021 (''NCC Group Letter'').

[32] *See* letter from Ian J. Frimet, Senior Vice President, Associate General Counsel, LPL Financial, Jan. 3, 2022 (''LPL Financial Letter''); letter from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA, Dec. 22, 2021 (''SIFMA Letter'').

[33] *See* LPL Financial Letter.

[34] *Id.*

[35] *See* Proposing Release, 86 FR at 68303.

[36] *See* Proposing Release, 86 FR at 68304–11.

[37] *See, e.g.,* LPL Financial Letter.

[38] SIFMA Letter.

[39] Letter from Blair Anderson, Director, AWS, Jan. 3, 2022 (''AWS Letter'').

[40] *See* Proposing Release, 86 FR at 68301.

system that preserves records in a digital format *and that requires a computer to access the records* with the concept that it is a system that preserves the records in a digital format *in a manner that permits the records to be viewed and downloaded*.[41] Therefore, the technology used to preserve records may employ a means other than a computer, but the technology must permit the records to be viewed and downloaded. These two features are necessary for firms to furnish records to representatives of the Commission and other securities regulators so that they may perform their oversight responsibilities. For these reasons and the reasons stated in the proposing release,[42] the Commission is adopting amendments that use the term ''electronic recordkeeping system'' and that define the term with the modifications discussed above.[43]

C. Elimination of Notice and Representation Requirements From Rule 17a–4(f)

Paragraph (f)(2)(i) of Rule 17a–4 requires a broker-dealer to notify its examining authority [44] prior to employing electronic storage media, including a 90-day notice if the broker-dealer intends to employ electronic storage media other than optical disk technology. Paragraph (f)(2)(i) also requires a representation from the broker-dealer or the storage medium vendor or another third party with appropriate expertise that the selected electronic storage medium meets the conditions set forth in the rule. Rule 18a–6 does not contain parallel notice and representation requirements. The Commission proposed to eliminate the notification and representation requirements from Rule 17a–4(f).[45] Commenters supported the elimination of these requirements, while none of the commenters expressed opposition.[46] For the reasons stated in the proposing release as well as in the comments,[47] the Commission is adopting the amendments eliminating these requirements, as proposed.[48]

D. Technical Requirements for Electronic Recordkeeping Systems

1. Applicability of the Requirements

The Commission proposed to set forth the technical requirements for electronic recordkeeping systems used by broker-dealers and SBS Entities in paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6, respectively.[49] The Commission proposed that the technical requirements for electronic recordkeeping systems in Rule 17a–4(f) apply to all broker-dealers.[50] The Commission further proposed that the technical requirements for electronic recordkeeping systems in paragraph (e)(2) of Rule 18a–6 apply to nonbank SBS Entities (*i.e.,* SBS Entities without a prudential regulator). Under the proposal, SBS Entities with a prudential regulator (''bank SBS Entities'') could employ electronic recordkeeping systems that did not necessarily meet the technical requirements set forth in paragraph (e)(2) of Rule 18a–6, as proposed to be amended. The intent was to avoid imposing requirements that could potentially conflict with regulations and guidance of the prudential regulators, particularly given that the Commission's recordkeeping requirements for bank SBS Entities are more limited in scope.[51] The Commission did not receive comments addressing the applicability of paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6. For the reasons stated in the proposing release,[52] the Commission is adopting the amendments regarding the applicability of the requirements, as proposed.[53]

2. The Audit-Trail and WORM Requirements

The Commission proposed to amend Rule 17a–4(f) to add the audit-trail requirement as an alternative to the existing WORM requirement.[54] Thus, under the proposal, an electronic recordkeeping system used by a broker-dealer to preserve Broker-Dealer Regulatory Records would need to meet either the audit-trail or WORM requirement. In addition, the Commission proposed to amend Rule 18a–6(e) to require that the electronic recordkeeping systems of nonbank SBS Entities meet either the audit-trail or the WORM requirement.[55] Thus, under the proposals, nonbank SBS Entities would need to preserve SBS Entity Regulatory Records using an electronic recordkeeping system that meets either the audit-trail or WORM requirement.

Commenters generally supported adding the audit-trail alternative to Rules 17a–4 and 18a–6. One commenter stated that the ''addition of an audit-trail based electronic record keeping system appears to be a sensible and workable option in addition to the option to store records in a WORM compliant manner'' and that it ''appears likely that broker-dealers will benefit from greater access to systems and technology that meet these broader technical criteria.'' [56] Another commenter stated that ''[f]or many broker-dealers, adoption of the proposal will result in significant cost savings and efficiencies'' and that ''[t]he current WORM system is expensive to build and maintain annually, and is only used to comply with Rule 17a–4.'' [57] This commenter also stated that the audit-trail requirement should ''have a significantly lower annual cost of maintenance.'' Other commenters similarly supported the Commission's effort to modernize Rule 17a–4 by providing an alternative to the WORM requirement.[58]

Several commenters, however, recommended that the Commission adopt a more principles-based approach in place of the audit-trail requirement and expressed support for a 2017

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[41] *See* paragraph (f)(1)(ii) of Rule 17a–4 and paragraph (e)(1)(i) of Rule 18a–6, as amended.

[42] *See* Proposing Release, 86 FR at 68304.

[43] *See* paragraph (f)(1)(ii) of Rule 17a–4 and paragraph (e)(1)(i) of Rule 18a-–6, as amended.

[44] The term ''examining authority'' means an SRO registered with the Commission under the Exchange Act (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker-dealer. *See* Section 17(j)(5) of the Exchange Act. 15 U.S.C. 78q(j)(5).

[45] *See* Proposing Release, 86 FR at 68304.

[46] *See* letter from Alexander Gavis, Senior Vice President & Deputy General Counsel, Fidelity Investments, Dec. 31, 2021 (''Fidelity Letter''); NRS Letter.

[47] *See* Proposing Release, 86 FR at 68304.

[48] *See* paragraph (f) of Rule 17a–4, as amended.

[49] *See* Proposing Release, 86 FR at 68304–07. Specifically, the proposed technical requirements were set forth in paragraphs (f)(2)(i) through (iv) of Rule 17a–4 and paragraphs (e)(2)(i) through (iv) of Rule 18a–6.

[50] *See* Proposing Release, 86 FR at 68304–05.

[51] *Id.*

[52] *Id.*

[53] *See* introductory text of paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6, as amended.

[54] *See* Proposing Release, 86 FR at 68305–06.

[55] *Id.*

[56] NCC Group Letter.

[57] LPL Financial Letter.

[58] *See* letter from William C. Anderson, Senior Vice President and Chief Compliance Officer, American Funds Distributors, Inc., Dec. 31, 2021 (''American Funds Distributors Letter'') (''In our experience the requirements of the current rule, particularly the requirement to store records in a write once read many format (WORM), have resulted in the implementation of complex procedures that do not serve the purposes for which the rule was designed. For example, many of our records are stored in systems that do not meet the WORM standards. As a result, we transfer records to a WORM compliant system, which is not as user friendly as the native systems used by the business on a day-to-day basis.''); letter from Alexander Gavis, Senior Vice President & Deputy General Counsel, Fidelity Investments, Dec. 31, 2021 (''Fidelity Letter'') (''WORM records are not easily searchable and, as a result, even as noted in the Release, SEC and FINRA examiners typically do not request records in WORM format. Examiners instead request customized data pulls from the non-WORM systems where the information was originally created prior to its storage in WORM format.'').

petition for rulemaking.[59] The petition was filed by a group of trade associations.[60] The petition requested that the Commission replace the WORM requirement with more liberal ''principles-based requirements'' similar to amendments the Commodity Futures Trading Commission (''CFTC'') had made to its electronic recordkeeping rule.[61] One of these commenters recommended that the Commission adopt the principles-based approach set forth in the petition and stated, ''The audit-trail alternative proposed by the SEC is not 'technology-neutral' and mandates specific technology requirements and electronic formats for broker-dealers, which reduce the ability for firms to implement future technological innovations or advancements.'' [62]

The Commission responded to the petition in the proposing release by stating that ''[w]hile [the proposed audit-trail requirement] would not rely on 'principles-based requirements' to protect the reliability and authenticity of electronic records, it is designed to address concerns raised by commenters about the WORM requirement.'' [63] The Commission continues to believe that providing the option to preserve records using an electronic recordkeeping system that complies with the audit-trail requirement appropriately addresses concerns about the WORM requirement while meeting the objective of the WORM requirement: the preservation of electronic records in a manner that protects the authenticity and reliability of original records.[64] As the Commission stated when proposing the audit-trail requirement, it is ''designed to address concerns that the WORM requirement causes some firms to deploy an electronic recordkeeping system that serves no purpose other than to hold records in a manner that meets the Commission's regulatory requirements for electronic recordkeeping systems.'' [65] The Commission further explained that the records stored on WORM-compliant electronic recordkeeping systems are often retained in that particular format solely for the purpose of meeting the WORM requirement (*i.e.,* they are not the records and associated electronic recordkeeping systems the firms use for business purposes). The Commission noted that broker-dealers have explained to Commission staff that the electronic recordkeeping systems used for business purposes are dynamic and updated constantly (*e.g.,* with each new transaction or position) and easily accessible for retrieving records; whereas the WORM-compliant electronic recordkeeping systems are more akin to static ''snapshots'' of the records at a point in time and less accessible.[66] Broker-dealers retrieve records from their business-based electronic recordkeeping systems for their own purposes. In addition, the Commission understood that firms generally retrieve and produce records from their business-based electronic recordkeeping systems rather than from their WORM-compliant electronic recordkeeping systems in response to requests from securities regulators because these records are easier to retrieve. The Commission further acknowledged that Commission staff typically do not specifically request that records be produced from the WORM-compliant recordkeeping system.[67] The exception would be a case where alteration is suspected. In that case, the staff would request records from the WORM-compliant electronic recordkeeping system.

The objective of the proposed audit-trail requirement was to provide an alternative to broker-dealers and nonbank SBS Entities that permits them to preserve Broker-Dealer Regulatory Records and SBS Regulatory Records, respectively, on the same electronic recordkeeping system they use for business purposes, but also to require that the system have the capacity to recreate an original record if it is modified or deleted. This requirement was designed to provide the same level of protection as the WORM requirement, which prevents records from being altered, over-written, or erased. The principles-based approach recommended by the commenters would not provide this level of protection because it simply requires ''appropriate systems and controls that ensure the authenticity and reliability of regulatory records.'' [68] The proposed amendments to Rules 17a–4 and 18a–6 and the principles-based approach recommended by the commenters share an objective: ensuring the authenticity and reliability of regulatory records. However, the audit-trail requirement is more likely to achieve this objective because, like the existing WORM requirement, it sets forth a specific and testable outcome that the electronic recordkeeping system must achieve: the ability to access and produce modified or deleted records in their original form.

The principles-based approach advocated by the commenters would not ensure the authenticity or reliability of electronic records with the same testable and specific outcome as the existing WORM requirement or the audit-trail requirement the Commission is adopting. This is because it would set forth a generalized standard for the electronic recordkeeping system to ensure the authenticity and reliability of the records: appropriate systems and controls. This approach focuses on the design of the electronic recordkeeping system and unlike the audit-trail or WORM requirement does not require a specific and testable outcome that the system must achieve in terms of promoting the authenticity and reliability of the records. Further, the design requirement—appropriate systems and controls—may not set forth obligations with respect to electronic recordkeeping that do not already exist under the general record preservation requirements of Rules 17a–4 and 18a–6. In particular, the broker-dealer or SBS Entity must retain Broker-Dealer Regulatory Records and SBS Entity Regulatory Records, respectively, in a manner that will enable the firm to produce copies of original records during their retention periods. A failure to be able to produce the records because, for example, they are

[59] *See* letter from Eversheds Sutherland (US) LLP on behalf of Committee of Annuity Insurers, Jan. 5, 2022 (''Committee of Annuity Insurers Letter''); letter from Dave T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, Jan 3, 2022 (''FSI Letter''); NRS Letter.

[60] *See* Petition 4–713 (Nov. 14, 2017) filed by the Securities Industry Financial Markets Association, Financial Services Roundtable, Futures Industry Association, International Swaps Derivatives Association, and Financial Services Institute available at *https://www.sec.gov/rules/petitions/2017/petn4-713.pdf* (''Rule 17a–4(f) Rulemaking Petition''). An addendum to the Rule 17a–4(f) Rulemaking Petition was filed on May 24, 2018, and is available at *https://www.sec.gov/rules/petitions/2018/ptn4-713-addendum.pdf* (''Rule 17a–4(f) Rulemaking Petition Addendum''). Comments on the petition were received and are available at *https://www.sec.gov/comments/4-713/4-713.htm.*

[61] *See* CFTC, *Recordkeeping,* 82 FR 24479 (May 30, 2017).

[62] FSI Letter.

[63] Proposing Release, 86 FR at 68302.

[64] *See* Proposing Release, 86 FR at 68302, 68305.

[65] Rule 17a–4(f) Rulemaking Petition at 4 (''Today, WORM systems are costly, outmoded, and inefficient storage containers used exclusively to meet the rule's requirements.''); *see also* Proposing Release, 86 FR 68305.

[66] *See* Rule 17a–4(f) Rulemaking Petition at 4 (''Data stored in WORM is essentially a static snapshot of a record that is locked and secured from any manipulation or deletion, as opposed to a complete system that could be used to stand up a production system during or following a disaster event.'').

[67] *See also* Rule 17a–4(f) Rulemaking Petition at 5 (''[O]ur members report that regulators (including SEC and FINRA examiners and enforcement staff) do not typically ask for production of records from WORM storage because the information or data is not readily sortable or searchable. Regulators instead request customized extracts or views of data collected from active storage systems where the record was originally created, that has not yet been transferred to a WORM system.'').

[68] *See* CFTC, *Recordkeeping,* 82 FR at 24486.

overwritten or lost would violate the existing preservation and prompt production of records requirements of Rules 17a–4 and 18a–6. Consequently, the systems and controls for preserving these records must be appropriate to serve this purpose irrespective of whether the records are stored in paper or electronic form. The audit-trail and WORM requirements go a step further because they prescribe specific outcomes the electronic recordkeeping system must achieve to promote the authenticity and reliability of the records. Moreover, the audit-trail requirement is designed to permit broker-dealers and SBS Entities to use their existing business-purpose recordkeeping systems to achieve the required outcome without specifying any particular technology solution. In this way, the audit-trail requirement provides the flexibility of a principles-based requirement by setting forth a high-level outcome the electronic recordkeeping system must achieve without prescribing how the system must be configured to meet that objective. For these reasons, the final amendments include the audit-trail requirement as an alternative to the WORM requirement.

As proposed, to meet the audit-trail requirement, the electronic recordkeeping system would need to maintain and preserve the records for the duration of their applicable retention periods in a manner that maintains a complete time-stamped audit trail that includes: (1) all modifications to and deletions of a record or any part thereof; (2) the date and time of operator entries and actions that create, modify, or delete the record; (3) the individual(s) creating, modifying, or deleting the record; and (4) any other information needed to maintain an audit trail of each distinct record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record and interim iterations of the record.[69]

One commenter stated that vendors ''typically already maintain the audit trail logs with the data points described in the rule.'' [70] In response to the proposed components of the audit trail set forth in items (2) and (3) above, another commenter stated that electronic recordkeeping systems ''don't always record names [of individuals] but always record a unique identifier that can be used to find the name'' and ''in many instances an automated system or process rather than a natural person will be the actor.'' [71] In response to this comment, the final amendments eliminate the requirement that the audit trail include the date and time of *operator entries* that create, modify, or delete the record.[72] The rules require the audit trail to include the date and time of *actions* that create, modify, or delete the record, as proposed. This requirement is intended to encompass both human-initiated and automated actions that create, modify, or delete the record. In further response to the comment, the final amendments require that the audit trail include, *if applicable,* the identity of the individual creating, modifying, or deleting the record.[73] The identity of the individual can be reflected in the audit trail as a unique identifier for the individual.

Commenters also sought clarity about the scope of the audit-trail requirement. One commenter asked when the audit trail must begin, and provided the examples of making sequential entries onto a blotter and of a draft blotter that does not become an ''official record of the firm.'' [74] Another commenter stated that ''[w]hile it is generally possible to produce a log showing who has made specific changes at a specific time, it may not always be possible for the means of electronic recordkeeping to reproduce every version of a record that has undergone changes at multiple points in time.'' [75] A third commenter suggested that broker-dealers should be permitted ''to maintain a log of all changes to the record rather than requiring each iteration of a record to be reproduced.'' [76]

As indicated above, the proposal specified that the audit trail must include any other information needed to maintain an audit trail of each distinct record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record *and interim iterations of the record.* The intent, however, was that the audit-trail requirement apply to Broker-Dealer Regulatory Records (*i.e.,* the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4) in the case of broker-dealers, and SBS Entity Regulatory Records (*i.e.,* the records required to be maintained and preserved pursuant to Rules 18a–5 and 18a–6) in the case of SBS Entities. The proposed audit-trail requirement was not intended to create new recordkeeping requirements under Rules 17a–3 and 17a–4 or Rules 18a–5 and 18a–6. Although broker-dealers and SBS Entities must comply with the individual records requirements set forth in these rules, the audit-trail requirement applies to the final records required pursuant to the rules, rather than to drafts or iterations of records that would not otherwise be required to be maintained and preserved under Rules 17a–3 and 17a–4 or Rules 18a–5 and 18a–6.

For example, paragraph (a)(1) of Rule 17a–3 requires a broker-dealer to make and keep current blotters (or other records of original entry) containing, among other information, an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. A broker-dealer's electronic recordkeeping system throughout the day may constantly update the information used to create these blotters as each new purchase, sale, receipt, or delivery of a security is made. The broker-dealer, however, does not need to create an audit trail for each iteration of this information when a new purchase, sale, receipt, or delivery of a security is made during the day because paragraph (a)(1) of Rule 17a–3 does not require these type of records to be made and kept current.

Instead, the rule requires blotters (or other records of original entry) containing, among other information, an itemized *daily* record of *all* purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers). Thus, the broker-dealer must make and keep current a daily record that reflects all transactions made throughout the day. It is this daily record to which the audit-trail requirement applies. In order to remove potential ambiguity in the rules on this point, the final amendments eliminate the phrase ''and interim iterations of the record.'' [77]

For these reasons and the reasons stated in the proposing release,[78] the Commission is adopting amendments that add the audit–trail requirement to Rule 17a–4(f) and the audit–trail and

[69] *See* Proposing Release, 86 FR at 68306.

[70] Letter from Adam Schaub, Vice President, RegEd, Jan. 3, 2022 (''RegEd Letter'').

[71] NRS Letter.

[72] *See* paragraph (f)(2)(i)(A)(*2*) of Rule 17a–4 and paragraph (e)(2)(i)(A)(*2*) of Rule 18a–6, as amended.

[73] *See* paragraph (f)(2)(i)(A)(*3*) of Rule 17a–4 and paragraph (e)(2)(i)(A)(*3*) of Rule 18a–6, as amended. As proposed, the audit trail needed to include the *individual(s)* creating, modifying, or deleting the record.

[74] RegEd Letter.

[75] SIFMA Letter.

[76] American Funds Distributors Letter.

[77] *See* paragraph (f)(2)(i)(A)(*4*) of Rule 17a–4 and paragraph (e)(2)(i)(A)(*4*) of Rule 18a–6, as amended.

[78] *See* Proposing Release, 86 FR at 68305–06.

WORM requirements to Rule 18a–6(e) with the modifications discussed above.[79] Under the final amendments, broker–dealers and nonbank SBS Entities have the flexibility to preserve all of their electronic Broker–Dealer Regulatory Records or SBS Entity Regulatory Records either by: (1) using an electronic recordkeeping system that meets *either* the audit–trail requirement *or* the WORM requirement; or (2) preserving some electronic records using an electronic recordkeeping system that meets the audit–trail requirement and preserving other electronic records using an electronic recordkeeping system that meets the WORM requirement.[80]

Finally, commenters asked how two Commission interpretations of the WORM requirement would apply in light of the amendments to Rules 17a–4(f) and 18a–6(e).[81] The Commission's interpretations of the WORM requirement were issued in 2003 and 2019.[82] The 2003 interpretation clarified that the WORM requirement does not mandate the use of optical disks and, therefore, a broker–dealer can use ''an electronic storage system that prevents the overwriting, erasing or otherwise altering of a record during its required retention period through the use of integrated hardware and software codes.'' [83] The 2019 interpretation further refined the 2003 interpretation. In particular, it noted that the 2003 interpretation described a process of integrated *software and hardware* codes and clarified that ''a software solution that prevents the overwriting, erasing, or otherwise altering of a record during its required retention period would meet the requirements of the rule.'' [84] The Commission confirms that a broker–dealer or nonbank SBS Entity can rely on the 2003 and 2019 interpretations with respect to meeting the WORM requirement of Rule 17a–4(f) or 18a–6(e), as amended. Because the 2003 and 2019 interpretations addressed the WORM requirement, they are not relevant to the audit–trail requirement being adopted in this document.

A commenter also asked how Commission guidance with respect to Rule 17a–4(f) and the Electronic Signatures in Global and National Commerce Act of 2000 (''ESIGN Act'') might be impacted by the amendments.[85] In 2001, the Commission issued guidance that Rule 17a–4(f) was consistent with the ESIGN Act.[86] The final amendments to Rule 17a–4(f) do not alter the rule in a way that would change this guidance.[87] Moreover, because Rule 18a–6(e) is closely modelled on Rule 17a–4(f), it also is consistent with the ESIGN Act for the reasons set forth in the Commission's 2001 guidance.

3. Verification Requirement

The Commission proposed that the electronic recordkeeping system used by a broker–dealer or nonbank SBS Entity must verify automatically the completeness and accuracy of the processes for storing and retaining records electronically.[88] The requirement was designed to ensure that when an original record is added to the electronic recordkeeping system it is completely and accurately captured in the system. The Commission received one comment on this proposed requirement, stating, ''[I]t is appropriate to require an electronic recordkeeping system to automatically verify the quality and accuracy of the records being made.'' [89] For the reasons stated in the proposing release,[90] the Commission is adopting the verification requirements, as proposed.[91]

4. Serialization Requirement

The Commission proposed to amend Rules 17a–4(f) and 18a–6(e) to require, if applicable, that the electronic recordkeeping system serialize the original and duplicate units of storage media, and time–date the required period of retention for the information placed on such electronic storage media.[92] The Commission explained that this requirement was limited to electronic recordkeeping systems that use optical disks to meet the WORM requirement. A commenter stated ''that the proposed addition of the 'if applicable' modifier is beneficial and removes the ambiguity of its application to systems without multiple units of storage media.'' This commenter also argued, however, that ''specificity of the 'serialize and time–date' requirements of the existing and proposed rules are unnecessary and duplicative of the requirements to produce the records and retain them for the proper duration.'' [93] The serialization and time–date requirements remain necessary to the extent that optical disks are used to store records electronically as the serial number and time–date stamp are used to distinguish one disk from another and to associate the records stored on the disk with that specific storage unit. For these reasons and the reasons stated in the proposing release,[94] the Commission is adopting the serialization requirements, substantially as proposed.[95]

5. Download and Transfer Requirement

The Commission proposed to amend Rules 17a–4(f) and 18a–6(e) to require that the electronic recordkeeping system must have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in both a human readable format and in a reasonably usable electronic format, and to readily download and transfer

[79] *See* paragraphs (f)(2)(i)(A) and (B) of Rule 17a–4 and paragraphs (e)(2)(i)(A) and (B) of Rule 18a–6, as amended. In addition, to improve the readability of these paragraphs, the final amendments consistently refer to a record in the singular by replacing the phrase ''the records'' and word ''their'' in paragraph (f)(2)(i)(A) of Rule 17a–4 and paragraph (e)(2)(i)(A) of Rule 18a–6, as amended, with the phrase ''a record'' and the word ''its'', respectively; replacing the word ''a'' in paragraph (f)(2)(i)(A)(*1*) of Rule 17a–4 and paragraph (e)(2)(i)(A)(*1*) of Rule 18a–6, as amended, with the word ''the''; and replacing the phrase ''each distinct'' in paragraph (f)(2)(i)(A)(*4*) of Rule 17a–4 and paragraph (e)(2)(i)(A)(*4*) of Rule 18a–6, as amended, with the word ''the''.

[80] For business reasons, broker–dealers and nonbank SBS Entities may elect to use two recordkeeping systems: one that complies with the audit–trail requirement and one that complies with the WORM requirement. For example, a WORM–compliant electronic recordkeeping system may be appropriate for certain types of records such as emails. Further, a broker–dealer may choose to continue to retain legacy Broker–Dealer Regulatory Records using a WORM–compliant electronic recordkeeping system, while employing an audit trail–compliant electronic recordkeeping system to preserve Broker–Dealer Regulatory Records created or received after the system is put in place.

[81] See Committee of Annuity Insurers Letter; FSI Letter. *See also* RegEd Letter (requesting that the Commission confirm whether the 2003 interpretation will extend to the requirements for the audit trail alternative).

[82] *See Electronic Storage of Broker–Dealer Records,* Exchange Act Release No. 47806 (May 7, 2003), 68 FR 25281, (May 12, 2003) (''Rule 17a–4(f) Interpretation''); SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68568.

[83] *See* Rule 17a–4(f) Interpretation, 68 FR at 25282.

[84] *See* SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68568.

[85] *See* Committee of Annuity Insurers Letter. *See also* Public Law 106–229, 114 Stat. 464 (2000).

[86] *See Commission Guidance to Broker–Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 With Respect to Rule 17a–4(f),* Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[87] *See id.*

[88] *See* Proposing Release, 86 FR at 68306.

[89] *See* NRS Letter.

[90] *See* Proposing Release, 86 FR at 68306.

[91] *See* paragraph (f)(2)(ii) of Rule 17a–4 and paragraph (e)(2)(ii) of Rule 18a–6, as amended.

[92] *See* Proposing Release, 86 FR at 68306–07.

[93] *See* NRS Letter.

[94] *See* Proposing Release, 86 FR at 68306–07.

[95] *See* paragraph (f)(2)(iii) of Rule 17a–4 and paragraph (e)(2)(iii) of Rule 18a–6, as amended. To improve the readability of paragraph (f)(2)(iii) of Rule 17a–4 and paragraph (e)(2)(iii) of Rule 18a–6, as amended, the Commission replaced the phrase ''and time–date for the required period of retention the information placed on such electronic storage media'' with the phrase ''and time–date the required period of retention for the information placed on such electronic storage media''.

the information needed to locate the electronic record, as required by the staffs of the Commission and other relevant securities regulators.[96] The Commission stated that a human readable format would be a format that can be naturally read by an individual and that a reasonably usable electronic format would be a format that is common and compatible with commonly used systems for accessing and reading electronic records. The Commission further explained that the requirement to download and transfer audit trails would apply only if the firm's electronic recordkeeping system uses the audit-trail alternative and that the general reference to ''information needed to locate the electronic record'' would be designed to incorporate whatever means a particular electronic recordkeeping systems uses to organize the records and locate a specific record (*e.g.,* indexes or data fields).

One commenter, with respect to the reasonably usable electronic format requirement, ''wholeheartedly agree[d] with the Commission's goal of making this standard flexible and future-proof'' and stated ''that the Commission's Proposal achieves this goal.'' [97] However, the commenter further stated that ''nearly all electronic recordkeeping systems will naturally provide *either* human readable or reasonably usable electronic formats.'' [98] Therefore, the commenter stated that it would be ''burdensome'' and add ''unnecessary cost and complexity'' to require that an electronic recordkeeping system have the capacity to produce a record in both formats. The commenter concluded by recommending ''that the proposed amendment be changed to reflect that electronic recordkeeping systems be required to have the capacity to produce either human readable or reasonably usable electronic formats, but not both.'' [99] The commenter provided no data to quantify the burden, cost, or complexity of the proposed requirement.

The Commission believes that the capacity to produce records in both formats is a necessary and important feature of electronic recordkeeping systems in terms of the ability of the Commission and other securities regulators being able to carry out their oversight responsibilities. Depending on the nature and volume of records requested by a securities regulator as part of an examination or investigation, producing them in a human readable format that is not also machine readable (*e.g.,* a hard copy or pdf of a voluminous spreadsheet) may hinder or delay the examination or investigation because it would take more time to search the records for relevant information; whereas producing electronic records in a reasonably usable electronic format will permit the records to be searched and sorted using a computer. Conversely, in other cases, it may be more efficient to produce a record in a human readable format; for example, if an examiner is on site and requests a specific record or if the requested record is a policies and procedures manual. Further, Rules 17a–4 and 18a–6 currently require broker-dealers and SBS Entities, respectively, to furnish promptly to a representative of the Commission *legible* (*i.e.,* capable of being read) copies of records.[100] Consequently, an electronic recordkeeping system of a broker-dealer or SBS Entity must have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in a human readable format to meet this existing obligation.

For these reasons and the reasons stated in the proposing release,[101] the Commission is adopting the download and transfer requirements, as proposed.[102]

6. Backup or Redundant Recordkeeping System

Paragraph (f)(3)(iii) of Rule 17a–4 requires a broker–dealer to store separately from the original, on any medium acceptable under Rule 17a–4, a duplicate copy of a record for the requisite time period. Similarly, paragraph (e)(3)(iii) of Rule 18a–6 requires that an SBS Entity store separately from the original a duplicate copy of a record stored on the electronic storage system for the requisite time period. These current provisions require broker–dealers and SBS Entities to maintain a second copy of each record.

The Commission proposed amendments to both of these paragraphs to require the broker–dealer and the SBS Entity to have a backup electronic recordkeeping system.[103] As proposed, the broker–dealer or SBS Entity would have needed to have a second electronic recordkeeping system that preserves a second set of records that can be accessed and examined if the primary electronic recordkeeping system storing the primary set of records is disrupted, malfunctions, or otherwise becomes inaccessible. The second electronic recordkeeping system would need to meet the requirements of Rules 17a–4(f) and 18a–6(e), except that it would not need a backup recordkeeping system. The records stored on the backup electronic recordkeeping system would have been required to be preserved in accordance with the record maintenance and preservation requirements of Rule 17a–4 or 18a–6, as applicable. Among other requirements, this would mean that the second set of records would have been required to be preserved for their required retention periods.

One commenter expressed support for the proposed requirement, stating, ''[t]he proposal requiring the covered entities to maintain a backup set of records is well taken and should be an existing practice among broker–dealers for disaster recovery and business continuity purposes.'' [104] Other commenters stated that a backup electronic recordkeeping system is not the only means of achieving redundancy of the records.[105] Another commenter stated that ''[a] 'backup electronic recordkeeping system' describes one of several methods of records recovery in the event an electronic recordkeeping system is disrupted, malfunctions, or otherwise becomes inaccessible.'' [106] This commenter suggested that the rule text instead require that the electronic recordkeeping system ''[m]aintain redundancies that provide an alternative that meets the other requirements of [Rule 17a–4(f)] to locate and re–create records, in the event the primary records required to be maintained and preserved pursuant to §§ 240.17a–3 and 240.17a–4 are unavailable.'' [107] A different commenter stated that the requirement for a backup electronic recordkeeping system should be replaced with a requirement that ''the means of electronic recordkeeping have fail–safes in place to ensure that records are accessible at all times, including during an emergency or at a time of significant business disruption.'' [108] The commenter further stated that the proposed requirement to maintain a separate backup system ''is not technologically neutral, as there are currently other alternatives available to ensure redundancy with respect to records in times of stress'' and that ''the requirement undermines one of the

[96] *See* Proposing Release, 86 FR at 68307.

[97] NRS Letter.

[98] *Id.* (emphasis added).

[99] *Id.*

[100] *See* paragraph (j) of Rule 17a–4 and paragraph (g) of Rule 18a–6.

[101] *See* Proposing Release, 86 FR at 68306–07.

[102] *See* paragraph (f)(2)(iv) of Rule 17a–4 and paragraph (e)(2)(iv) of Rule 18a–6, as amended.

[103] *See* Proposing Release, 86 FR at 68308.

[104] NCC Group Letter.

[105] *See* letter from Curtis Turnell, Compliance Program Manager, Microsoft Corporation, Jan. 23, 2022 (''Microsoft Letter''); SIFMA Letter.

[106] Microsoft Letter.

[107] *Id.*

[108] SIFMA Letter.

central goals of the Proposed Rules to permit Regulated Entities to have a unified set of business records and regulatory records.'' [109]

In response to these comments, the final amendments to Rules 17a–4 and 18a–6 provide the option to use either a backup recordkeeping system or other redundancy capabilities.[110] Further, the final amendments make these technical requirements that the electronic recordkeeping system itself must meet by relocating them to the paragraphs of Rules 17a–4 and 18a–6 that set forth the technical requirements for electronic recordkeeping systems.[111] The Commission views the means by which an electronic recordkeeping system achieves redundancy as being part of this overall system. For example, in the simplest case, a WORM-compliant electronic recordkeeping system may create two copies on an optical disk with each disk containing the same set of records. If the primary disk is corrupted, the secondary disk can be used to access the records and to make an additional copy to preserve a new backup. The primary and backup disks are part of the hardware (storage media) of the electronic recordkeeping system. Similarly, an electronic recordkeeping system may include a second recordkeeping system that uses a different server or group of servers to store a duplicate set of records. If one server or group of servers fails, the overall system will switch to using the second (or backup) recordkeeping system to access the records on the second server or group of servers. Further, redundancy may be achieved in the manner in which the electronic recordkeeping system stores information, such as by using disk arrays. For these reasons, the final amendments require the electronic recordkeeping system to include a backup recordkeeping system or have other redundancy capabilities.

As indicated above, the electronic recordkeeping system must include either a backup electronic recordkeeping system or other redundancy capabilities. Under the proposal, the broker–dealer or SBS Entity would have been required to maintain a backup electronic recordkeeping system that meets the other requirements of Rule 17a–4(f) or Rule 18a–6(e) (as applicable) and that retains the Broker–Dealer Regulatory Records or SBS Entity Regulatory Records, respectively, in accordance with Rule 17a–4(f) or Rule 18a–6(e) (as applicable).[112] Commenters addressed this aspect of the proposal by stating that a backup recordkeeping system—by itself—may not serve as a redundant set of records.[113] One of these commenters stated that ''for a 'backup electronic recordkeeping system' to be an effective recovery method many dependencies must be considered, such as assuring geographic dispersion.'' [114] The other commenter stated that the ''rule does not, for example, discuss geographic or topological disparity between the two copies.'' [115] In response to these comments, the final amendments modify the requirement to specify that the backup electronic recordkeeping system must also retain the Broker–Dealer Regulatory Records or SBS Entity Regulatory Records *in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible.*[116] In keeping with the objective of making the rules technology neutral and able to adapt to new technologies, the final amendments do not specify how the backup electronic recordkeeping system must achieve this level of redundancy. However, sufficient geographic separation of the hardware components of the primary and backup electronic recordkeeping systems—as identified by commenters—may be an aspect of achieving the redundancy required by the final amendments. However a firm meets the redundancy requirement, the backup electronic recordkeeping system must serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible because, for example, it is impacted by a natural disaster or a power outage.

The second option under the final amendments relies on redundancy capabilities that are designed to ensure access to Broker–Dealer Regulatory Records or the SBS Entity Regulatory Records must have a level of redundancy that is at least equal to the level that is achieved through using a backup recordkeeping system.[117] In other words, this alternative requires a standard that ensures at least as much access to Broker–Dealer Regulatory Records or SBS Entity Regulatory Records as a backup recordkeeping system.

For these reasons and the reasons stated in the proposing release,[118] the Commission is adopting redundancy requirements with the modifications discussed above.[119]

E. Requirements for Broker-Dealers and SBS Entities Using Electronic Recordkeeping Systems

1. Applicability of the Requirements

Paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6 impose obligations on broker-dealers and SBS Entities, respectively, related to their use of electronic recordkeeping systems. In general, these requirements are designed to ensure that the staffs of the Commission and other relevant securities regulators can access and examine the records. The proposed amendments would have applied these requirements to all broker-dealers and SBS Entities (*i.e.,* both bank and nonbank SBS Entities). Aside from comments on the specific requirements discussed below, the Commission did not receive comments on the applicability of paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6 to broker-dealers and SBS Entities.[120] For the reasons stated in the proposing release,[121] the Commission is adopting the amendments regarding the

[109] *Id.*

[110] *See* paragraph (f)(2)(v) of Rule 17a–4 and paragraph (e)(2)(v) of Rule 18a–6, as amended.

[111] This modification is achieved by moving the requirement to paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6, as amended. Under the proposal, the requirement to have a backup recordkeeping system was in paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6, which set forth the requirements for a broker–dealer or SBS Entity using an electronic recordkeeping system. *See* Proposing Release, 86 FR at 68307. As discussed above, paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6 set forth the technical requirements for *electronic recordkeeping systems themselves,* making these paragraphs the more appropriate location for the backup/redundancy requirements. *See id.* at 68308. In addition, placing this requirement in paragraph (e)(2) of Rule 18a–6 appropriately restricts the requirement to nonbank SBS Entities.

[112] *See* Proposing Release, 86 FR at 68308.

[113] *See* Microsoft Letter; NRS Letter.

[114] Microsoft Letter.

[115] NRS Letter.

[116] *See* paragraph (f)(2)(v)(A) of Rule 17a–4 and paragraph (e)(2)(v)(A) of Rule 18a–6, as amended.

[117] For example, the redundancy capabilities should consider taking into account fault tolerance. The National Institute of Standards and Technology defines ''fault tolerance'' as ''[a] property of a system that allows proper operation even if components fail.'' *See, e.g.,* Computer Security Resource Center, National Institute of Standards and Technology, U.S. Department of Commerce definition of ''fault tolerance''. Available at *https://csrc.nist.gov/glossary/term/fault_tolerance.*

[118] *See* Proposing Release, 86 FR at 68308.

[119] *See* paragraph (f)(2)(v) of Rule 17a–4 and paragraph (e)(2)(v) of Rule 18a–6, as amended.

[120] A commenter raised a concern that a proposed amendment to paragraph (e)(3) of Rule 18a–6 could be read to impose a technical requirement on electronic recordkeeping systems used by bank SBS Entities, which would be contrary to the Commission's intent not to impose such requirements on these entities. *See* SIFMA Letter. The comment and the Commission's response to the comment are discussed below in section II.E.4. of this release.

[121] *See* Proposing Release, 86 FR at 68307–08.

applicability of the requirements, as proposed.[122]

2. Facilities To Produce Records

Paragraph (f)(3)(i) of Rule 17a–4 requires a broker-dealer to at all times have available, for examination by Commission or SRO staff, facilities for the immediate, easily readable projection or production of micrographic media or electronic storage media images and for the production of easily readable images. Similarly, paragraph (e)(3)(i) of Rule 18a–6 requires an SBS Entity to at all times have available for examination by Commission staff facilities for the immediate, easily readable projection or production of records or images maintained on an electronic storage system and for the production of easily readable copies of those records or images.

The Commission proposed amending these paragraphs to make them more technology neutral.[123] Under the amendments, broker-dealers and SBS Entities would be required to have at all times available, for examination by the staffs of the Commission and other relevant securities regulators, facilities for immediate production of records preserved by means of the electronic recordkeeping system and for producing copies of those records.

One commenter stated that ''this proposed rule is unclear, impractical, and inconsistent with general examination practices'' and asked whether it requires broker-dealers to ''have one or more computer workstations set aside for use by examiners'' that are ''able to access all electronic recordkeeping systems.'' [124] The commenter further stated that the ''requirement for the broker-dealer to *promptly* deliver requested records should be adequate to ensure that the DEA receives the required information and afford the broker-dealer with an opportunity to perform a privilege review before production.'' [125] The commenter reiterated these comments with respect to the proposed requirements of paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6 (discussed next) to the extent they required the broker-dealer or SBS Entity to be ready at all times to provide, and immediately provide, any *information needed to locate records* stored by means of the electronic recordkeeping system that the staffs of the Commission, SROs, and state securities regulators, as applicable, may request.[126]

In proposing the amendments to paragraph (f)(3)(i) of Rule 17a–4 and paragraph (e)(3)(i) of Rule 18a–6, the Commission stated that the ''objective is to set forth new requirements that would require broker-dealers and SBS Entities to have facilities available to produce records to the staffs of the Commission, SROs, and state securities regulators, as applicable, and to read records stored on an *electronic recordkeeping system*.'' [127] The objective was not to alter how the Commission staff or other securities regulators conduct examinations. In the normal course, the facilities will typically be used by the broker-dealer or SBS Entity to produce the records and not by the examiners to review the records, so the use of the broker-dealer's or SBS Entity's facilities to review the records will not be necessary. However, there may be instances where the Commission staff or other securities regulators may need to use the facilities to access the records. For example, if the broker-dealer or SBS Entity fails financially and no longer has sufficient staff available to respond to requests to produce records, the Commission staff may need to use the facilities to access the records or request an executive officer or third party to use the facilities to produce the records immediately to Commission staff or other securities regulators so that the examination or other use of the records by the Commission staff is not delayed.[128] Further, in order to access the records, the Commission staff will need the information necessary to locate the records.

For these reasons and the reasons stated in the proposing release,[129] the Commission is adopting the facilities requirements, substantially as proposed.[130]

3. Ability To Provide Records Stored Electronically

Paragraph (f)(3)(ii) of Rule 17a–4 requires a broker-dealer to be ready at all times to provide, and immediately provide, any facsimile enlargement that the staff of the Commission, an SRO, or state securities regulator may request. Similarly, paragraph (e)(3)(ii) of Rule 18a–6 requires that an SBS Entity be ready at all times to immediately provide in a readable format any record or index stored on the electronic storage system that the staff of the Commission requests.

The Commission proposed amendments to both of these paragraphs to require the broker-dealer and the SBS Entity to be ready at all times to provide records stored on an electronic recordkeeping system and related information.[131] In particular, the current text of both paragraphs would have been replaced with new text requiring that the broker-dealer or SBS Entity be ready at all times to provide, and immediately provide, any (1) *record* or (2) *information needed to locate records* stored by means of the electronic recordkeeping system that the staffs of the Commission, SROs, and state securities regulators, as applicable, may request. One commenter that raised the concern that the facilities requirement discussed above would alter how the Commission and other securities regulators perform examinations reiterated that concern with this proposed requirement to the extent it required the production of *information needed to locate records*.[132] The final amendments eliminate the *information needed to locate records* requirement from paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6, as amended, because it is duplicative of a requirement in paragraph (f)(3)(iv) of Rule 17a–4 and paragraph (e)(3)(iv) of

[122] *See* introductory text of paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6, as amended.

[123] *See* Proposing Release, 86 FR at 68308. The proposed amendments to paragraph (f)(3)(i) of Rule 17a–4 would have deleted references to micrographic media and would have replaced terms that are related to the use of micrographic media. *Id.* The amendments as adopted transfer the current requirements for a broker-dealer electing to use a micrographic media system from paragraph (f)(3) of Rule 17a–4 to paragraph (f)(4) of that rule.

[124] NRS Letter.

[125] *Id.* (emphasis in original).

[126] *See* NRS Letter. *See also* sections II.E.3. and II.E.5. of this release (discussing the proposals regarding information necessary to locate records stored on an electronic recordkeeping system).

[127] Proposing Release, 86 FR 68308.

[128] As discussed in section II.E.6. of this release, broker-dealers and SBS Entities will need to designate an executive officer or third party to undertake, among other things, to furnish promptly to the Commission and other securities regulators information necessary to download copies of a record and its audit trail (if applicable) and to take reasonable steps to download the record and audit trail.

[129] *See* Proposing Release, 86 FR 68308.

[130] *See* paragraph (f)(3)(i) of Rule 17a–4 and paragraph (e)(3)(i) of Rule 18a–6, as amended. To improve the readability of paragraph (f)(3)(i) of Rule 17a–4 and paragraph (e)(3)(i) of Rule 18a–6, as amended, the Commission is replacing the phrase ''facilities for immediate production of records preserved by means of the electronic recordkeeping system and for producing copies of those records'' with the phrase ''facilities for immediately producing the records preserved by means of the electronic recordkeeping system and for producing copies of those records''. As discussed in section II.E.5. of this release, the Commission also is adopting the requirement with respect to producing the information necessary to locate the records in other paragraphs of Rules 17a–4 and 18a–6.

[131] *See* Proposing Release, 86 FR at 68308.

[132] *See* NRS Letter. This comment is addressed in section II.E.2. of this release.

Rule 18a–6, as amended.[133] Consequently, the requirements of paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6, as amended, are limited to addressing the production of a *record* and do not address the production of *information needed to locate a record.*

For these reasons and the reasons stated in the proposing release,[134] the Commission is adopting the requirement that broker-dealers and SBS Entities be ready to provide a record with the modification discussed above.[135]

4. Accountability Regarding Inputting of Records

Paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6 require broker-dealers and SBS Entities, respectively, to have in place an audit system providing for accountability regarding inputting of Broker-Dealer Regulatory Records or SBS Entity Regulatory Records to electronic storage media (in the case of Rule 17a–4(f)) and the electronic storage system (in the case of Rule 18a–6(e)) and inputting of any changes made to every original and duplicate record maintained and preserved thereby. The paragraphs further require that the broker-dealer or SBS Entity must be able to have the results of such audit system available for examination by the staff of the Commission and that the audit results must be preserved for the time required for the audited records. The requirements of paragraph (f)(3)(v) of Rule 17a–4 were designed to address electronic recordkeeping systems that use technology that is WORM-compliant. The requirements of paragraph (e)(3)(v) of Rule 18a–6 were modelled closely on paragraph (f)(3)(v) of Rule 17a–4 even though Rule 18a–6(e) did not include the WORM requirement when it was adopted.[136]

The Commission proposed to replace the existing requirements of paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6 with a requirement that the broker-dealer or SBS Entity have in place an auditable system of controls that records, among other things: (1) each input, alteration, or deletion of a record; (2) the names of individuals inputting, altering, or deleting a record; and (3) the date and time such individuals input, altered, or deleted the record.[137] As used in the proposed text, the phrase ''auditable system of controls'' would have meant a system of controls that is documented and can be audited by internal or external examiners to determine whether the controls are operating as would be required by the rule.[138]

Commenters expressed concern that the proposed amendments to paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6 would be duplicative of the audit-trail requirement.[139] A commenter stated that the proposed new requirements would impose requirements ''nearly identical'' to the proposed new audit trail requirements of paragraph (f)(2)(i) of Rule 17a–4 and paragraph (e)(2)(i) of Rule 18a–6.[140] The commenter further stated that the requirements of paragraph (e)(3)(v) as of Rule 18a–6, as proposed to be amended, would ''impose on bank SBS Entities many of the same technical requirements to maintain an audit trail that [would] apply to non-bank SBS Entities under [Rule]18a–6(e)(2)'' as proposed to be amended.[141] The commenter therefore suggested that the requirements be ''deleted'' or, in the alternative, that bank SBS Entities be excluded from having to comply with them.[142]

The Commission agrees that the audit-trail requirement, as proposed and adopted, will achieve the same results as the proposed amendments to paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6. As discussed above, under the audit-trail requirement, a broker-dealer or nonbank SBS Entity must use an electronic recordkeeping system that preserves a record for the duration of its applicable retention period in a manner that maintains a complete time-stamped audit trail that includes: (1) all modifications to and deletions of the record or any part thereof; (2) the date and time of actions that create, modify, or delete the record; (3) if applicable, the identity of the individual creating, modifying, or deleting the record; and (4) any other information needed to maintain an audit trail of the record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record if it is modified or deleted.[143] Consequently, the electronic recordkeeping system must generate the same type of information that paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6, as proposed, would have required the broker-dealer or SBS Entity to generate separately from the electronic recordkeeping system.

However, as discussed above,[144] WORM-compliant electronic recordkeeping systems are not required to generate records of every iteration of every required record, and may in fact not be capable of generating every iteration. Consequently, the final amendments maintain the existing requirement on broker-dealers and nonbank SBS Entities with respect to their use of WORM-compliant recordkeeping systems by retaining the existing text of the rules, which—in the case of Rule 17a–4(f)—was adopted to address the use of WORM-compliant electronic recordkeeping systems and has been a requirement since 1997.[145] Therefore, a broker-dealer or nonbank SBS Entity using a WORM-compliant electronic recordkeeping system will need to generate this information. The requirements do not apply with respect to an electronic recordkeeping system that complies with the audit-trail requirement. Nor do they apply to bank SBS Entities because they are not required to use a WORM-compliant electronic recordkeeping system (or an audit-trail compliant electronic recordkeeping system).[146]

For these reasons, the Commission is not adopting the proposed amendments to paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6 and, instead, is retaining the existing text of the rules with certain modifications.[147]

[133] As discussed in section II.E.5. of this release, the final amendments consolidate the requirements relating to information needed to access and locate records preserved by means of an electronic recordkeeping system in paragraph (f)(3)(iv) of Rule 17a–4 and paragraph (e)(3)(iv) of Rule 18a–6, as amended.

[134] *See* Proposing Release, 86 FR at 68308.

[135] *See* paragraph (f)(3)(i) of Rule 17a–4 and paragraph (e)(3)(i) of Rule 18a–6, as amended.

[136] *See* SBSD/MSBSP Recordkeeping Proposing Release, 79 FR at 25219; SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68567–69.

[137] *See* Proposing Release, 86 FR at 68309.

[138] *See id.*

[139] *See* SIFMA Letter; RegEd Letter (expressing agreement with the SIFMA Letter).

[140] SIFMA Letter.

[141] *Id.*

[142] *See id.*

[143] *See* paragraph (f)(2)(i) of Rule 17a–4 and paragraph (e)(2)(i) of Rule 18a–6, as amended.

[144] *See* section II.D.2 of this release (discussing these amendments in more detail).

[145] *See* Rule 17a–4(f) Adopting Release, 62 FR 6496.

[146] *See* paragraph (f)(3)(iii) of Rule 17a–4 and paragraph (e)(3)(iii) of Rule 18a–6, as amended. As adopted, each paragraph contains an introductory clause stating that the requirements set forth in the paragraph apply to broker-dealers or SBS Entities operating pursuant to paragraph (f)(2)(i)(B) of Rule 17a–4 or paragraph (e)(2)(i)(B) of Rule 18–6, respectively, which set forth the WORM alternative. As discussed in section II.E.1. of this release, bank SBS Entities are not subject to the requirements of paragraph (e)(2) of Rule 18a–6 and, therefore, will not be operating pursuant to paragraph (e)(2)(i)(B) of that rule.

[147] *See* paragraph (f)(3)(iii) of Rule 17a–4 and paragraph (e)(3)(iii) of Rule 18a–6, as amended. Under the final amendments, both paragraphs use

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5. Information To Access and Locate Records

As discussed above, paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6, as proposed, would have required a broker-dealer or SBS Entity, respectively, to, among other things, be ready at all times to provide, and immediately provide, any (1) *record* and (2) *information needed to locate records* stored by means of the electronic recordkeeping system that the staffs of the Commission or other relevant securities regulators may request.[148] As discussed above, paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6, as amended, address the production of a *record* but not the production of *information needed to locate records.* Instead, as discussed below, the final amendments consolidate requirements that address information needed to locate records stored electronically into single paragraphs in Rules 17a–4 and 18a–6.

Paragraph (f)(3)(iv) of Rule 17a–4 establishes a series of obligations relating to the indexing of Broker-Dealer Regulatory Records. Paragraph (e)(3)(iv) of Rule 18a–6 establishes similar requirements relating to the indexing of SBS Entity Regulatory Records. The Commission proposed to amend these paragraphs to impose obligations on broker-dealers and SBS Entities to organize and maintain information necessary to locate records stored on their electronic recordkeeping systems without mandating the use of indexes.[149] Under the amendments, a broker-dealer or SBS Entity using an electronic recordkeeping system would have been required to organize and maintain information necessary to locate records maintained by the electronic recordkeeping system.[150] A commenter stated that this proposal was ''clear and appropriate and will provide broker-dealers the flexibility to implement any method of cataloguing their records.'' [151]

Paragraph (f)(3)(vi) of Rule 17a–4 and paragraph (e)(3)(vi) of Rule 18a–6 require a broker-dealer and an SBS Entity, respectively, to maintain, keep current, and provide promptly upon request by the staffs of the Commission or an SRO, if applicable, all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes. The Commission proposed to eliminate the escrow account option from these paragraphs.[152] The Commission proposed to retain the requirement that the broker-dealer or SBS Entity maintain, keep current, and provide promptly upon request by the Commission, SROs, and state securities regulators, as applicable, all information necessary to access and locate records preserved by means of the electronic recordkeeping system. No comments were received on these proposed amendments.

To improve the clarity of the rules and eliminate potentially redundant requirements, the final amendments consolidate the proposed requirements discussed above in a single paragraph. Under the amendments, a broker-dealer and SBS Entity must organize, maintain, keep current, and provide promptly upon request by the staffs of the Commission or other relevant securities regulators all information necessary to access and locate records preserved by means of the electronic recordkeeping system.[153]

As discussed above, a commenter raised a concern that requiring broker-dealers to produce *information needed to locate records* to the Commission staff and other securities regulators could alter the existing examination process.[154] The final amendments, which, as explained above, do not directly alter the examination process and are not designed to otherwise change the examination process, retain the production requirement relating to providing *information needed to locate* electronic records for reasons discussed above.[155] As described in the proposing release, the more general reference to ''information needed to locate the electronic record'' is designed to incorporate whatever means a particular electronic recordkeeping system uses to organize the records and locate a specific record (*e.g.,* indexes or data fields).[156] For these reasons, the Commission is adopting the proposed requirements with respect to the information necessary to locate electronic records with modifications discussed above.[157]

6. Designated Executive Officer or Third Party

Paragraph (f)(3)(vii) of Rule 17a–4 provides that, for a broker-dealer exclusively using electronic storage media for some or all of its record preservation, at least one third party, who has access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium under Rule 17a–4, must file with the DEA for the broker-dealer certain undertakings. The required text of the undertakings are set forth in the rule. They require the third party to undertake: (1) to furnish promptly to the Commission, the broker-dealer's SRO(s), and state securities regulators having jurisdiction over the broker-dealer (collectively, the ''securities regulators''), upon reasonable request, such information as is deemed necessary by the securities regulators to download information kept on the broker-dealer's electronic storage media to any medium acceptable under Rule 17a–4; and (2) to take reasonable steps to provide access to information contained on the broker-dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker-dealer pursuant to Rules 17a–3 and 17a–4 in a format acceptable to the securities regulators. The rule further provides that these arrangements must provide specifically that in the event of a failure on the part of a broker-dealer to download the record into a readable format and after reasonable notice to the broker-dealer, upon being provided with the appropriate electronic storage medium, the third party will undertake

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the term ''electronic recordkeeping system'' rather than the existing terms ''electronic storage media'' in the case of Rule 17a–4(f) and ''electronic storage system'' in the case of Rule 17a–6(e). *See* section II.B. of this release (discussing the definition of ''electronic recordkeeping system''). Finally, both paragraphs have been re-lettered from paragraphs (f)(3)(v) and (e)(3)(v) to paragraphs (f)(3)(iii) and (e)(3)(iii), respectively, because the requirements in paragraphs (f)(3)(iii) and (e)(3)(iii), as proposed, relating to a backup recordkeeping system were moved to paragraphs (f)(2) and (e)(2), respectively, and the requirements in paragraphs (f)(3)(iv) and (e)(3)(iv), as proposed, relating to information needed to locate electronic records were consolidated with the requirements in paragraphs (f)(3)(vi) and (e)(3)(vi), as proposed, respectively. *See* sections II.D.6. and II.D.5. of this release (discussing, respectively, the modifications to paragraph (f)(3)(iii) of Rule 17a–4 and paragraph (e)(3)(iii) of Rule 18a–6, as proposed, and paragraph (f)(3)(iv) of Rule 17a–4 and paragraph (e)(3)(iv) of Rule 18a–6, as proposed).

[148] *See* section II.E.3. of this release (discussing these amendments in more detail).

[149] *See* Proposing Release, 86 FR at 68309.

[150] *See* Proposing Release, 86 FR at 68309, note 75.

[151] NRS Letter.

[152] *See* Proposing Release, 86 FR at 68309.

[153] *See* paragraph (f)(3)(iv) of Rule 17a–4 and paragraph (e)(3)(iv) of Rule 18a–6, as amended.

[154] *See* NRS Letter.

[155] *See* section II.E.2. of this release (discussing the comment and the Commission's response to the comment).

[156] *See* Proposing Release, 86 FR at 68307.

[157] *See* paragraph (f)(3)(iv) of Rule 17a–4 and paragraph (e)(3)(iv) of Rule 18a–6, as amended.

to do so, as the securities regulators may request.

The Commission proposed to amend paragraph (f)(3)(vii) of Rule 17a–4 to replace the third-party undertakings requirement with a senior officer undertakings requirement.[158] In proposing this modification, the Commission noted that commenters stated during the rulemaking for Rule 18a–6(e) that the requirement ''was outdated in light of the changed technological environment'' and that providing a third party access to electronic recordkeeping systems and client information ''needlessly exposes firms to data leakage and cybersecurity threats.'' [159] The proposed amendments to paragraph (f)(3)(vii) of Rule 17a–4 also would have modified the second undertaking so that it would have been triggered if the broker-dealer failed to provide records and, if applicable, associated audit trails stored on the electronic recordkeeping system.[160] Rule 18a–6(e) did not include the third-party undertakings requirement. The proposed amendments to Rule 18a–6(e) would have added the senior officer undertakings requirement to the rule.[161] However, the undertakings would have been required to be filed with the Commission (rather than a DEA) because SBS Entities do not have a DEA.

One commenter expressed general support for the proposal.[162] Four commenters suggested clarifying the proposal to specify that broker-dealers and SBS Entities should be allowed to designate more than one senior officer to complete the proposed undertakings.[163] One of these commenters stated that doing so would ''provid[e] leeway to firms to account for personnel location changes, vacation scheduling, remote working and succession planning.'' [164] Two commenters noted that the term ''senior officer'' could be confusing, as the term is used in other regulatory contexts.[165] One of these commenters suggested using the term ''designated officers,'' [166] while the other suggested ''designated head or heads.'' [167]

Commenters also suggested modifying the proposed senior officer undertakings requirements to explicitly allow for the designation or delegation of responsibility.[168] Two of these commenters expressed concern that the language as proposed would require technical expertise not usually expected in a senior officer position.[169] One of these commenters stated that the proposed language ''implies that the [designated] individual or individuals will have every password as well as personal knowledge of every repository that may hold records of the Regulated Entity'' and that this would be ''an unrealistic expectation of a senior person in a large organization.'' [170]

Commenters expressed concerns with replacing the third-party undertakings requirement with the senior officer undertakings requirement.[171] One of these commenters stated that ''the designated third party is a critical component of Rule 17a–4 which helps to ensure timely access to records if requested by a regulator'' and that the requirement ''creates a clear incentive for full cooperation from broker-dealers at the outset by providing an alternative and independent means to access records if the broker-dealer fails to do so.'' [172] A second commenter stated that the ''real value [of designated third-party use] for clients is in our regular meetings in which the client's compliance and [information technology] IT teams are brought together to discuss and ensure,'' among other things, that the client understands ''how electronic compliance records are retained internally including access, Rule 17a–4(f) requirements, disposition, and a review of legal holds,'' and that it ''follow[s] industry 'best practices' as to collection and capture of metadata.'' [173] This commenter further stated that ''an independent 3rd party working together with both IT and compliance teams provides a valuable service to financial institutions and their respective DEAs.'' A third commenter stated that ''the Commission should consider providing firms with the option to either have a senior officer sign an undertaking or provide an undertaking by a third party, if that third party will also be maintaining those records on behalf of the firm.'' [174]

In response to the comments, the final amendments to Rules 17a–4(f) and 18a–6(e) require a broker-dealer or SBS Entity to designate either an executive officer of the firm (''Designated Executive Officer'') or an unaffiliated third-party (''Designated Third Party'') to make the required undertakings. For example, some firms may choose the Designated Executive Officer option for cyber-security reasons because these firms prefer to make this an internal function. Other firms may elect the Designated Third-Party Option because they prefer to outsource this function. Firms may elect to outsource this function because they are comfortable with how the Designated Third-Party manages cybersecurity risk and because they may use that entity for other record custodial services.

The Designated Executive Officer replaces the role of the ''senior officer,'' an undefined term introduced in the proposed rule amendments. The Designated Executive Officer must be a member of senior management of the broker-dealer or SBS Entity who has access to and the ability to provide the records of the firm maintained and preserved on the firm's electronic recordkeeping system. Further, the Designated Executive Officer can appoint in writing up to two employees and three specialists to assist the Designated Executive Officer in fulfilling the officer's obligations set forth in the undertakings.

Therefore, under the final amendments a broker-dealer or SBS Entity has the option to designate an executive officer to make the required undertakings in lieu of designating a third party.[175] A Designated Executive Officer must be a member of senior management of the broker-dealer or SBS Entity who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a designated specialist who reports directly or indirectly to the Designated Executive Officer.[176] As proposed, the amendments would have required the senior officer to have

[158] *See* Proposing Release, 86 FR at 68310–11.

[159] Proposing Release, 86 FR at 68310. *See also* SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68569.

[160] *See* Proposing Release, 86 FR at 68311. The Commission proposed a number of additional amendments to the form of the undertakings to improve their readability and conform them to other proposed amendments (*e.g.,* using the term ''electronic recordkeeping system'' instead of the term ''electronic storage media'' and requirements to produce a record and its audit trail in a human readable format or a reasonably usable electronic format). *See* Proposing Release, 86 FR at 68310, note 86.

[161] *See* Proposing Release, 86 FR at 68311.

[162] *See* letter from Robert Laorno, General Counsel, ICE Bonds Securities Corporation, Dec. 14, 2021 (''ICE Bonds Letter'').

[163] *See* Fidelity Letter; NRS Letter; RegEd Letter; SIFMA Letter.

[164] Fidelity Letter.

[165] *See* Fidelity Letter; SIFMA Letter.

[166] SIFMA Letter.

[167] Fidelity Letter.

[168] *See* American Funds Distributors Letter; ICE Bonds Letter; SIFMA Letter.

[169] *See* American Funds Distributors Letter; SIFMA Letter.

[170] SIFMA Letter.

[171] *See* letter from Douglas Weeden, Managing Director, 17a–4, LLC, Jan, 3, 2022 (''17a–4, LLC Letter''); NCC Group Letter; RegEd Letter.

[172] NCC Group Letter.

[173] 17a–4, LLC Letter.

[174] RegEd Letter.

[175] *See* paragraph (f)(3)(v)(A) of Rule 17a–4 and paragraph (e)(3)(v)(A) of Rule 18a–6, as amended.

[176] *See* paragraph (f)(1)(iii) of Rule 17a–4 and paragraph (e)(1)(ii) of Rule 18a–6, as amended (defining the term ''designated executive officer'').

independent access to the records.[177] The Commission explained that ''[i]ndependent access would mean the senior officer has the knowledge, credentials, and information necessary to access and provide the records without having to rely on other individuals at the firm.'' A Designated Executive Officer under the final amendments, however, must have access and the ability to provide the records either *directly or through a designated specialist* who reports directly or indirectly to the officer. The final amendments permit the Designated Executive Officer to appoint in writing up to three designated specialists.[178] A designated specialist must be an employee of the broker-dealer or SBS Entity *who has access to and the ability to provide records* maintained and preserved on the electronic recordkeeping system.[179] Consequently, under the final amendments, the Designated Executive Officer either must have the knowledge, credentials, and information necessary to access and provide the records without having to rely on other individuals at the firm or have appointed in writing up to three designated specialists who have such knowledge, credentials, and information and that are direct or indirect reports to the officer. In this way, the Designated Executive Officer's access can be achieved through the officer's ability to direct a designated specialist to access and provide the records.

Under the final amendments, the Designated Executive Officer also can appoint in writing up to two *designated officers* who will take the steps necessary to fulfill the obligations of the Designated Executive Officer set forth in the undertakings in the event the Designated Executive Officer is unable to fulfill those obligations.[180] A designated officer must be an employee of the broker-dealer or SBS Entity who reports directly or indirectly to the Designated Executive Officer and who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a designated specialist who reports directly or indirectly to the designated officer.[181] As is required of the Designated Executive Officer, the designated officer either must have the knowledge, credentials, and information necessary to access and provide the records without having to rely on other individuals at the firm or be able to direct a designated specialist who has such knowledge, credentials, and information.

The final amendments provide that the Designated Executive Officer's appointment of, or reliance on, a designated officer or designated specialist does not relieve the Designated Executive Officer of the obligations set forth in the undertakings.[182] The Designated Executive Officer is at all times responsible for fulfilling the obligations set forth in the undertakings either directly or through a designated officer or specialist regardless of any actions taken by a designated officer or designated specialist in response to a request of the Commission or other relevant securities regulator that the Designated Executive Officer fulfill an obligation set forth in the undertakings. In response to the comment that it would be ''an unrealistic expectation of a senior person in a large organization'' to ''have every password as well as personal knowledge of every repository that may hold records of the Regulated Entity,'' [183] the Commission believes that the Designated Executive Officer of a broker-dealer or SBS Entity should have information about every repository that the firm may employ for the purpose of holding the firm's records pursuant to the requirements of Rule 17a–4(f) or 18a–6(e). Otherwise, this individual may not be able to fulfill directly or indirectly the obligations in the undertaking with respect to the records stored at those repositories. This does not mean the Designated Executive Officer must personally have this information at hand at all times. The firm should have documentation identifying the locations where its records are stored in order to meet its regulatory obligations with respect to the records.[184] The Designated Executive Officer can rely on that documentation. In addition, under the final rule, the Designated Executive Officer can rely on a designated officer or designated specialist to provide details such as passwords necessary to access the records.

Under the final amendments, a broker-dealer or SBS Entity has the option to designate a third party (''Designated Third Party'') to make the required undertakings in lieu of designating an executive officer.[185] Thus, broker-dealers can continue to use a third party to meet the requirement. However, because the final amendments modify the form of the undertakings, broker-dealers that elect to use the Designated Third Party option will need to file updated undertakings with their DEAs.

For these reasons and the reasons stated in the proposing release, the Commission is adopting the undertakings requirements with the modifications discussed above.[186]

Finally, the Commission received several comments regarding the potential process of transitioning from the current rules to the rules as proposed, were they to be adopted.[187] Two commenters stated that the proposing release was unclear on how firms should transition from their current WORM-based electronic recordkeeping systems, stating that the removal of the requirement for a third-party undertaking could result in ''challenges'' arising from the process of terminating a third-party relationship with a WORM recordkeeping provider. These two commenters also requested ''guidance and clarification'' as to whether a broker-dealer would be required to rescind or withdraw its prior undertakings, notices, or WORM representations or whether a broker-dealer would need to notify the Commission before transitioning to another compliant alternative.[188]

As discussed above, broker-dealers will need to file new undertakings with their DEAs as a result of the final amendments regardless of whether they switch to using a Designated Executive

[177] *See* Proposing Release, 86 FR at 68311.

[178] *See* paragraph (f)(3)(v)(B)(*2*) of Rule 17a–4 and paragraph (e)(3)(v)(B)(*2*) of Rule 18a–6, as amended.

[179] *See* paragraph (f)(1)(v) of Rule 17a–4 and paragraph (e)(1)(iv) of Rule 18a–6, as amended (defining the term ''designated specialist'').

[180] *See* paragraph (f)(3)(v)(B)(*1*) of Rule 17a–4 and paragraph (e)(3)(v)(B)(*1*) of Rule 18a–6, as amended.

[181] *See* paragraph (f)(1)(iv) of Rule 17a–4 and paragraph (e)(1)(iii) of Rule 18a–6, as amended (defining ''designated officer'').

[182] *See* paragraph (f)(3)(v)(C) of Rule 17a–4 and paragraph (e)(3)(v)(C) of Rule 18a–6, as amended.

[183] SIFMA Letter.

[184] To the extent this information is recorded in a memorandum or an agreement, the broker-dealer or nonbank SBS Entity would need to preserve the documentation pursuant to the requirements of paragraph (b)(4) or (7) of Rule 17a–4 or paragraph (b)(1)(iv) or (vii) of Rule 18a–6, respectively.

[185] *See* paragraph (f)(3)(v)(A) of Rule 17a–4 and paragraph (e)(3)(v)(A) of Rule 18a–6, as amended. To distinguish the Designated Third Party from the Designated Executive Officer, the final amendments define a ''designated third party'' as ''a person that is not affiliated with the broker-dealer or SBS Entity who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system.'' *See* paragraph (f)(1)(vi) of Rule 17a–4 and paragraph (e)(1)(v) of Rule 18a–6, as amended. This definition is consistent with the requirements for a third party prior to the amendments and, therefore, entities that are serving as Designated Third Parties prior to the amendments should be able to continue doing so.

[186] *See* paragraph (f)(3)(v) of Rule 17a–4 and paragraph (e)(3)(v) of Rule 18a–6, as amended.

[187] *See* Committee of Annuity Issuers Letter; FSI Letter; SIFMA Letter.

[188] *See* Committee of Annuity Issuers Letter; FSI Letter.

Officer, switch to using a different Designated Third Party, or continue to use their existing Designated Third Party. Similarly, under Rule 17a–4(i) prior to these amendments, broker-dealers needed to file new undertakings if they switched to using a different Designated Third Party. In filing the new undertakings, broker-dealers may indicate that they are replacing the previously filed undertakings. Further, in response to the request for clarification, the broker-dealer need not notify the Commission that it is switching from a WORM-compliant electronic recordkeeping system to an audit trail-compliant electronic recordkeeping service.

F. Requirements for Broker-Dealers Using Micrographic Media To Preserve Records

Rule 17a–4(f) permits broker-dealers to maintain and preserve Broker-Dealer Regulatory Records on micrographic media. The rule defines the term *micrographic media* as microfilm or microfiche, or any similar medium.[189] The current requirements for broker-dealers using micrographic media are set forth in paragraphs (f)(3)(i) through (iv) of Rule 17a–4, which also set forth requirements for broker-dealers using electronic storage media. The Commission proposed to move these requirements to new paragraph (f)(4) of Rule 17a–4.[190] One commenter expressed support for retaining the micrographic media provisions in Rule 17a–4.[191]

For the reasons stated in the proposing release,[192] the Commission is adopting the micrographic media amendments as proposed.[193]

G. Requirements for Certain Third Parties That Maintain Broker-Dealer or SBS Entity Regulatory Records

Paragraph (i) of Rule 17a–4 (''Rule 17a–4(i)'') and paragraph (f) of Rule18a–6 (''Rule 18a–6(f)'') require a *third party* who prepares or maintains Broker-Dealer Regulatory Records or SBS Regulatory Records (regardless of whether the records are in paper or electronic form) to file a written undertaking with the Commission signed by a duly authorized person (''Traditional Undertaking'').[194] The Traditional Undertaking must include a provision whereby the third party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records. The rules further provide that an agreement with the third party will not relieve the broker-dealer or SBS Entity from the responsibility to prepare and maintain the Broker-Dealer Regulatory Records or the SBS Regulatory Records, respectively.[195]

Commenters stated that cloud service providers do not have the ability to make the Traditional Undertaking required by Rules 17a–4(i) and 18a–6(f).[196] One commenter stated that ''[s]ince cloud storage is similar to storing the records in-house with respect to who can access the records, it is generally not possible for a third-party provider to produce any records in an electronic format (much less a ''hard copy'') given that such files are often encrypted and accessible only by the Regulated Entity.'' [197] Another commenter stated, ''[i]mportantly, unlike Regulated Entities using the types of service providers specified in Rule 17a–4(i) (*i.e.,* outside service bureau, depository, or bank), customers using cloud services maintain ownership *and control* of their content, including control over . . . who has access to their accounts and content, and how those access rights are granted, managed, and revoked.'' [198] A third commenter stated that ''many broker-dealers struggle to find outside recordkeeping vendors willing to provide the Traditional Undertaking and that ''many cloud service providers . . . do not have the ability to make the [Traditional Undertaking], as these files are typically encrypted and only accessible by the broker-dealer firm using the cloud storage services.'' This commenter further stated that ''given the inability for cloud providers to make (or, in some cases, their refusal to assume liability for making) the [Traditional Undertaking], the SEC should consider relaxing or eliminating this undertaking entirely.'' [199] An additional commenter stated that ''[w]hile Rule 17a–4(i) was likely written with hardcopy (paper) records in mind, it does not specifically mention paper or any other medium.'' This commenter added that ''[a]s the brokerage industry (along with its self-regulatory organization, the Financial Industry Regulatory Authority (FINRA)) moves away from maintaining paper records, and is increasingly employing cloud based solutions, this undertaking is now outdated and does not represent current recordkeeping approaches and configurations.'' [200]

The commenters have pointed out a significant difference in how traditional records custodians maintain records for their clients compared to how cloud service providers maintain records for their clients. Namely, traditional records custodians control access to the records whereas cloud service providers give their clients the ability to remotely access the records and to encrypt the records. Nonetheless, if a broker-dealer or SBS Entity uses a cloud service provider to maintain Broker-Dealer Regulatory Records or SBS Entity Regulatory Records, the current requirements of Rules 17a–4(i) and 18a–6(f), respectively, are implicated because a third party (rather than the broker-dealer or SBS Entity) is holding the records. Moreover, while the broker-dealer or SBS Entity may be able to access the records remotely, the cloud service provider can block that access. In this way, the cloud service provider can control access to the records. Therefore, under the existing requirements of Rules 17a–4(i) and 18a–6(f), the broker-dealer or SBS Entity must have the cloud service provider execute the Traditional Undertaking.

However, the requirements of Rule 17a–4(i) pre-date the use of cloud service providers by broker-dealers. Moreover, Rule 18a–6(f) was modelled on Rule 17a–4(i) and, therefore, similarly was not designed to address the use of cloud service providers by

[189] *See* paragraph (f)(1)(i) of Rule 17a–4.

[190] *See* Proposing Release, 86 FR at 68311.

[191] *See* NRS Letter.

[192] *See* Proposing Release, 86 FR at 68311.

[193] *See* paragraph (f)(4) of Rule 17a–4, as amended.

[194] Rule 17a–4(i) currently uses the term ''outside entity'' whereas paragraph (f)(1) of Rule 18a–6 currently uses the term ''third party.'' Consequently, the amendments to paragraph (i) of Rule 17a–4 discussed below permitting the Alternative Undertaking also use the term ''outside entity'' to be consistent with the existing text of the rule. *See* paragraph (i)(1)(ii) of Rule 17a–4, as amended. The term ''outside entity'' has the same meaning as the term ''third party.'' In both cases, the terms mean a person other than the broker-dealer or SBS Entity. For the purposes of the discussion of the amendments permitting the Alternative Undertaking in this release, the Commission is using the term ''third party.''

[195] *See* paragraph (i)(2) of Rule 17a–4 and paragraph (f)(2) of Rule 18a–6. As noted above, paragraph (f)(1) of Rule 18a–6(f) currently uses the term ''third party.'' However, paragraph (f)(2) uses the term ''outside entity.'' To be consistent, the Commission is amending paragraph (f)(2) of Rule 18a–6 to replace the term ''outside entity'' with the term ''third party.'' *See* paragraph (f)(2) of Rule 18a–6, as amended.

[196] *See* AWS Letter; Committee of Annuity Insurers Letter; Fidelity Letter; FSI Letter; SIFMA Letter.

[197] SIFMA Letter.

[198] AWS Letter (emphasis in original).

[199] Committee of Annuity Insurers Letter.

[200] Fidelity Letter.

SBS Entities.[201] One of the goals of this rulemaking is to make Rules 17a–4 and 18a–6 more technology neutral.[202] The objective is to prescribe rules that remain workable as record maintenance and preservation technologies evolve over time but also to set forth requirements designed to ensure that broker-dealers and SBS Entities maintain and preserve records in a manner that promotes their integrity, authenticity, and accessibility. In light of the comments and the emerging use of cloud service providers by broker-dealers and SBS Entities, the Commission is adopting amendments to Rules 17a–4(i) and 18a–6(f).[203] The amendments permit a cloud service provider to make an alternative undertaking that is tailored to how cloud service providers maintain records for broker-dealers and SBS Entities (''Alternative Undertaking'') in lieu of the Traditional Undertaking. At the same time, the amendments are designed to ensure that the records are accessible and can be examined by the representatives and designees of the Commission and produced by the broker-dealer or SBS Entity to the representatives and designees of the Commission.

Under the amendments, a third party may file the Alternative Undertaking (the format of which is discussed below) in lieu of the Traditional Undertaking if the Broker-Dealer Regulatory Records or SBS Regulatory Records are maintained and preserved by means of an *electronic recordkeeping system as defined in Rules 17a–4(f) and 18a–6(e),* respectively, utilizing servers or other storage devices that are owned or operated by a third party (including an affiliate of the broker-dealer or SBS Entity) [204] and the broker-dealer or SBS Entity has independent access to the records.[205] Thus, the ability to provide the Alternative Undertaking does not apply when the third party maintains Broker-Dealer Regulatory Records or SBS Regulatory Records in paper format or on micrographic media. This limitation is based on the fact that some electronic records held by a third party can nonetheless be accessed remotely (*e.g.,* from the premises of the broker-dealer or SBS Entity) and downloaded to a local server (*e.g.,* one owned and operated by the broker-dealer or SBS Entity). Records stored in paper form or on micrographic media cannot be accessed remotely—one must travel to the site where the records are held to access or retrieve them. Therefore, accessing the records requires the cooperation of the third party to either permit a representative or designee of the Commission to enter the site where the records are stored to examine them or to produce a hard copy of the records to the representative or designee. For these reasons, third parties that hold Broker-Dealer Regulatory Records or SBS Entity Regulatory Records in paper format or on micrographic media will continue to be required to provide the Traditional Undertaking set forth in amended paragraph (i)(1)(i) of Rule 17a–4 or paragraph (f)(1)(i) of Rule 18a–6, respectively. As discussed above, the Traditional Undertaking must include a provision whereby the third party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

As indicated above, a second condition to utilizing the Alternative Undertaking is that the broker-dealer or SBS Entity must have *independent access* to the records held by the third party. The fact that the records are held by the third party in *electronic form* alone is not enough to utilize the Alternative Undertaking. The final amendments define ''independent access'' to mean that the broker-dealer or SBS Entity can regularly access the records without the need of any intervention by the third party and through such access unilaterally take actions with the respect to the records held by the third party that are contemplated by the Traditional Undertaking. Specifically, the broker-dealer or SBS Entity must be able to permit examination of the books and records at any time or from time to time during business hours by representatives or designees of the Commission,[206] and to promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records.[207]

Thus, the definition of *independent access* is designed to ensure that the broker-dealer or SBS Entity can unilaterally provide the same access to the records as agreed to by a third party executing the Traditional Undertaking. This means that the broker-dealer or SBS Entity must be able to make the records available for examination and to produce hard copies of the records by accessing them remotely without the need of any intervention by the third party that holds the records. In effect, the broker-dealer must have the same access to the records and capability to produce the records that would be the case if the broker-dealer or SBS Entity held the records itself and not at a third party. With this level of access, the Traditional Undertaking is not necessary because Commission representatives and designees can access the records through the broker-dealer or SBS Entity without the need for the third party to take any intervening steps.

If the conditions set forth under paragraphs (i)(1)(ii)(A) and (B) of Rule 17a–4 and paragraphs (f)(1)(ii)(A) and (B) of Rule 18a–6, as amended are met, the broker-dealer is permitted to have the third party execute the Alternative Undertaking in lieu of the Traditional Undertaking. The format of the

[201] *See* SBSD/MSBSP Recordkeeping Proposing Release, 79 FR at 25219–20; SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68569–70.

[202] *See* Proposing Release, 86 FR at 68301.

[203] *See* paragraph (i)(1)(ii) of Rule 17a–4 and paragraph (f)(1)(ii) of Rule 18a–6, as amended. Because the amendments are set forth in new paragraph (i)(1)(ii) of Rule 17a–4 and paragraph (f)(1)(ii) of Rule 18a–6, current paragraph (i)(1) of Rule 17a–4 and paragraph (f)(1) of Rule 18a–6 are being re-lettered paragraphs (i)(1)(i) and (f)(1)(i), respectively. In light of these amendments, the Commission is amending the existing requirements of current paragraph (i)(1) of Rule 17a–4 and paragraph (f)(1) of Rule 18a–6 to add text explicitly identifying entities that provide cloud services as third-party record custodians under Rules 17a–4(i) and 18a–4(f) (in particular, the amendments add the phrase '', including a recordkeeping service that owns and operates the servers or other storage devices on which the records are preserved or maintained,'' after the phrase ''or other recordkeeping service'' in Rule 17a–4(i) and the phrase '', including by a third party that owns and operates the servers or other storage devices on which the records are preserved or maintained,'' after the phrase ''or maintained by a third party'' in Rule 18a–4(f). *See* paragraph (i)(1)(i) of Rule 17a–4 and paragraph (f)(1)(i) of Rule 18a–6, respectively, as amended.

[204] The Commission has included this clarification in the rule text to ensure that the requirements of the Alternative Undertaking apply to every broker-dealer or SBS Entity that uses a third-party provider, regardless of whether or not that third-party provider is affiliated with the broker-dealer or SBS Entity.

[205] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[206] *See* paragraph (i)(1)(ii)(B)(*1*) of Rule 17a–4 and paragraph (f)(1)(ii)(B)(*1*) of Rule 18a–6, as amended. *See also* paragraph (i)(1)(i) of Rule 17a–4 and paragraph (f)(1)(i) of Rule 18a–6, as amended (setting forth the Traditional Undertaking requirement, which provides, in pertinent part, that the third party must undertake to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Commission).

[207] *See* paragraph (i)(1)(ii)(B)(*2*) of Rule 17a–4 and paragraph (f)(1)(ii)(B)(*2*) of Rule 18a–6, as amended. *See also* paragraph (i)(1)(i) of Rule 17a–4 and paragraph (f)(1)(i) of Rule 18a–6, as amended (setting forth the Traditional Undertaking requirement, which provides, in pertinent part, that the third party must undertake to promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records).

Alternative Undertaking is designed to account for how cloud service providers maintain records for broker-dealers and SBS Entities but also to promote the accessibility of those records to the Commission and other securities regulators and, in the case of broker-dealers, to a trustee appointed under SIPA. First, in the Alternative Undertaking, the third party must acknowledge that the records are the property of the broker-dealer or SBS Entity.[208] The Traditional Undertaking has a similar requirement to acknowledge the records are the property of the broker-dealer or SBS Entity.[209]

Second, the third party must acknowledge in the Alternative Undertaking that the broker-dealer or SBS Entity has made three representations to the third party.[210] The broker-dealer or SBS Entity could, for example, make these representations in the service contract with the third party or an addendum to an existing service contract. The first representation is that broker-dealer or SBS Entity is subject to Commission rules governing the maintenance and preservation of certain records. This representation, and the third party's acknowledgement of it, are designed to alert the third party that certain of the records held by the third party for the broker-dealer or SBS Entity are subject to Federal securities laws administered by the Commission and, therefore, to inform the third party of the necessity and importance of maintaining the records in compliance with those laws.

The second representation is that the broker-dealer or the SBS Entity has *independent access* to the records maintained by the third party.[211] As discussed above, the final amendments define the term ''independent access'' and the broker-dealer or SBS Entity must have independent access to the records in order to use the Alternative Undertaking. It is the responsibility of the broker-dealer or SBS Entity (not the third party) to ensure that its access to the records maintained by the third party meets the definition of ''independent access'' under the final amendments. This representation, and the third party's acknowledgement of it, are designed to delineate the obligations of the broker-dealer or SBS Entity and the third party; namely, that it is the responsibility of the broker-dealer or SBS Entity to make the records held by the third party available for examination or to produce hard copies of the records (and not the responsibility of the third party).

The third representation is that the broker-dealer or SBS Entity consents to the third party fulfilling the obligations set forth in the Alternative Undertaking.[212] As discussed in the next paragraph, the third party will need to agree to take or refrain from taking certain actions in the Alternative Undertaking with respect to the records it maintains for the broker-dealer or SBS Entity. This representation, and the third party's acknowledgement of it, are designed to ensure that the third party can fulfill these obligations under its arrangement with the broker-dealer or the SBS Entity.

In addition to the acknowledgements, the third party must undertake to facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records (collectively, ''records access'') by a representative or designee of the Commission as permitted under the law.[213] Further, in the case of a broker-dealer, the third party also must undertake to facilitate within its ability, and not impede or prevent, a trustee appointed under SIPA to liquidate the broker-dealer in accessing, downloading, or transferring the records as permitted under the law.[214] These undertakings are designed to address the fact that, while the broker-dealer or SBS Entity has independent access to the records, the third party owns and/or operates the servers or other storage devices on which the records are stored. Therefore, the third party can block records access. In the Alternative Undertaking, the third party will need to agree not to take such an action. Further, the third party will need to agree to facilitate *within its ability* records access. This does not mean that the third party must produce a hard copy of the records or take the other actions that are agreed to in the Traditional Undertaking. Rather, it means that the third party undertakes to provide to the Commission representative or designee or SIPA trustee the same type of technical support with respect to records access that it would provide to the broker-dealer or SBS Entity in the normal course.

For these reasons, the Commission is adopting amendments to Rules 17a–4(i) and 18a–6(f) to provide an alternative to the Traditional Undertaking to accommodate the use of cloud service providers by broker-dealers and SBS Entities.[215]

The Commission notes that the Financial Industry Regulatory Authority (''FINRA'') commented on the proposing release by reiterating the concerns it has expressed in the past regarding the obligations of third parties that maintain and preserve Broker-Dealer Regulatory Records pursuant to Rule 17a–4(i).[216] Specifically, FINRA staff has ''expressed concerns that broker-dealers are entering into contracts with third-party recordkeeping service providers that have provisions permitting the service provider to delete or discard the broker-dealer's records required to be preserved pursuant to Rules 17a–3 and 17a–4, typically in response to non-payment by the broker-dealer of fees due under the contract but also in other circumstances.'' [217] In adopting Rule 17a–4(i), the Commission emphasized that the records of a broker-dealer must be available at all times for examination in order to assure the protection of customers.[218] Prior to adopting the rule, the Commission had found that, in situations where a broker-dealer or its service providers were experiencing financial difficulty, the records of the broker-dealer had not always been available to the broker-dealer or to the Commission. The Commission adopted Rule 17a–4(i) ''to assure the accessibility of broker-dealer records in situations where, for example, a service bureau refuses to surrender the records due to nonpayment of fees.'' [219] Contractual

[208] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[209] *See* paragraph (i)(1)(i) of Rule 17a–4 and paragraph (f)(1)(i) of Rule 18a–6, as amended.

[210] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[211] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[212] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[213] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4 and paragraph (f)(1)(ii)(A) of Rule 18a–6, as amended.

[214] *See* paragraph (i)(1)(ii)(A) of Rule 17a–4. SBS Entities are not members of SIPC.

[215] *See* paragraph (i)(1)(ii) of Rule 17a–4 and paragraph (f)(1)(ii) of Rule 18a–6, as amended.

[216] *See* letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets, Commission, to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, FINRA, dated Apr. 12, 2018. (''Third-Party Record Preservation Letter''). FINRA serves as the examining authority for most broker-dealers.

[217] *Id.*

[218] *See Recordkeeping by Brokers and Dealers,* Exchange Act Release No. 13962 (Sept. 15, 1977), 42 FR 47551, 47552 (Sept. 21, 1977) (''17a–4(i) Adopting Release'').

[219] *Id.; Filing of Agreements by Outside Service Bureaus,* Exchange Act Release No. 13273 (Feb. 16, 1977), 42 FR 10698, 10698 (Feb. 23, 1977). *See also Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers,* Exchange Act Release No. 10756 (Apr. 26, 1974), 39 FR 16440, 16441 (May 9, 1974) (''If a broker-dealer hires or engages an outside service bureau or other recordkeeping service to handle its records, the requirement to make and keep current the broker-dealer's books and records is in no way diminished

Continued

provisions that would permit, among other things, a service provider to withhold, delete, or discard records in the event of non-payment by the broker-dealer are inconsistent with the retention requirements of Rule 17a–4 and the undertaking requirements of Rule 17a–4(i).[220] Moreover, if a third party deletes or discards a broker-dealer's records in a manner that is not consistent with the retention requirements in Rule 17a–4, such action would constitute a primary violation of the rule by the broker-dealer and may subject the service provider to secondary liability for causing or aiding and abetting the violation. The same holds true with respect to Rule 18a–6(f). The Commission clarifies that any contractual provisions between a broker-dealer or SBS Entity and a third-party service provider that would allow the latter to withhold, delete, or discard records—electronic or otherwise—in the event of non-payment by the broker-dealer or SBS Entity are inconsistent with the retention requirements of Rule 17a–4 or 18a–6, as applicable, and the undertaking requirements of Rule 17a–4(i) or 18a–6(f), as applicable.

H. Requirement To Produce Electronic Records in a Reasonably Usable Electronic Format

Paragraph (j) of Rule 17a–4 (''Rule 17a–4(j)'') requires broker-dealers to furnish promptly to the Commission legible, true, complete, and current copies of those records of the firm that are required to be preserved under Rule 17a–4 or any other record of the firm that is subject to examination under Section 17(b) of the Exchange Act.[221] Paragraph (g) of Rule 18a–6 (''Rule 18a–6(g)'') requires SBS Entities to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that are required to be preserved under Rule 18a–6, or any other records of the firm subject to examination or required to be made or maintained pursuant to Section 15F of the Exchange Act.[222]

The Commission proposed to amend Rule 17a–4(j) to require that a broker-dealer must furnish any record and its audit trail (if applicable) preserved electronically pursuant to Rule 17a–4(f) in a reasonably usable electronic format, if requested by a representative of the Commission.[223] The Commission similarly proposed to amend Rule 18a–6(g) to require SBS Entities to furnish any record preserved electronically pursuant to Rule 18a–6(e) in a reasonably usable electronic format, if requested by a representative of the Commission. One commenter stated that the Commission ''should consider including a minimal list of acceptable formats.'' [224] In the interests of keeping the requirements as technologically neutral as possible and not identifying formats that could become obsolete, the Commission believes it would not be appropriate to provide examples; however, it notes that a reasonably usable electronic format would be a format that is common and compatible with commonly used systems for accessing and reading electronic records.

A commenter stated that the ''proposed amendments, requiring the record and its audit trail, are appropriate, but only if explicitly requested by a representative of the Commission.'' [225] The commenter explained that the amendment could ''be interpreted to mean that any time a record is requested, and it is stored in an electronic recordkeeping system, as proposed, the record's audit trail must also be delivered.'' The objective of the amendments is to require the broker-dealer or SBS Entity to provide records stored electronically in a reasonably usable electronic format if requested by a representative of the Commission and, if also requested by a representative of the Commission, the audit trails of the records in a reasonably usable electronic format. The request of the Commission representative will govern whether the broker-dealer or SBS Entity must produce the record, the audit trail of the record, or both the record and its audit trail.

For these reasons and the reasons stated in the proposing release,[226] the Commission is adopting the prompt production of records amendments as proposed.[227]

I. Compliance Date

A commenter stated that regulated entities should be given 18 months to comply with the rules as amended, stating, ''[t]his will give Regulated Entities time to develop, implement, and test changes that they believe will be necessary to comply with the amended rules'' and that this ''is particularly acute for non-bank SBS Entities given that they will now have to comply with either an audit trail or WORM requirement for the first time.'' [228] For the reasons discussed below, the Commission is not setting the compliance date as 18 months after publication in the **Federal Register** as suggested by the commenter. Instead, for the reasons discussed below, the compliance date for the amendments to Rule 17a–4 is six months after the amendments are published in the **Federal Register**, while the compliance date for the amendments to Rule 18a–6 is twelve months after the amendments are published in the **Federal Register**.

Under the final amendments to Rule 17a–4, broker-dealers can continue to use their existing WORM-compliant electronic recordkeeping systems and transition to audit-trail compliant systems over time when they are ready to implement an electronic recordkeeping system that meets that requirement. However, the final amendments will require them to be able to produce a record in a human readable and reasonably usable electronic format. In addition, while they can continue to use their existing Designated Third Party, updated undertakings will need to be filed with the broker-dealer's DEAs because of the amendments to the format of the undertakings. Also, if they use a cloud service provider and a Traditional Undertaking from the provider has not been filed with the Commission, a Traditional or Alternative Undertaking will need to be filed.[229] The Commission believes that these new requirements—that is, ensuring that

and under such circumstances the broker-dealer is responsible to the same degree for maintaining current books and records as if he were maintaining them himself. Where a broker-dealer undertakes to have his books and records prepared and maintained by a service bureau or recordkeeping service, he should assure himself that the service will be provided inconformity with the Commission recordkeeping rules.'').

[220] *See* 17a–4(i) Adopting Release, 42 FR at 47551.

[221] Section 17(b) of the Exchange Act provides, in pertinent part, that all records of a broker-dealer are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78q(b).

[222] Section 15F(f)(1) of the Exchange Act provides, in pertinent part, that SBSDs and MSBSPs shall keep books and records required by Commission rule open to inspection and examination by any representative of the Commission. *See* 15 U.S.C. 78o-10(f)(1).

[223] *See* Proposing Release, 86 FR at 68311.

[224] NRS Letter.

[225] *Id.*

[226] *See* Proposing Release, 86 FR at 68311.

[227] *See* paragraph (j) of Rule 17a–4 and paragraph (g) of Rule 18a–6, as amended.

[228] SIFMA Letter.

[229] If a cloud service provider has filed a Traditional Undertaking on behalf of a broker-dealer or SBS Entity and the conditions for filing the Alternative Undertaking can be met, the cloud service provider could file the Alternative Undertaking to replace the Traditional Undertaking.

records are produced in a human readable and reasonably usable electronic format, filing updated undertakings with the DEAs, and, if necessary, ensuring that a cloud service provider has filed a Traditional or Alternative Undertaking with the Commission—are relatively minor. The Commission believes that given that broker-dealers themselves presumably need access to—and the ability to read—their own records retained by means of an electronic recordkeeping system, most, if not all, broker-dealer electronic records should already be produced in a human readable and reasonably usable electronic format. Furthermore, the Commission believes that since the exact wording of the undertakings required to be updated or filed with a broker-dealer's DEA or the Commission (whether by the broker-dealer or its cloud service provider) is set forth in the rule text, executing such undertakings should not be a particularly time-consuming activity. Finally, the Commission believes that should any broker-dealers need to amend their contractual agreements with their cloud service providers to reflect the new requirements being adopted in this document, the straightforward nature of the new requirements will mean that the drafting and execution of any such contractual amendments should be a simple matter. For these reasons, the Commission believes that six months after publication in the **Federal Register** will be sufficient time to come into compliance with these new requirements.

SBS Entities will be required to take more actions than broker-dealers to come into compliance with the requirements. Under the amendments to Rule 18a–6, nonbank SBS Entities that maintain and preserve their records in an electronic format will need to implement electronic recordkeeping systems that meet either the audit-trail or WORM requirement. The Commission believes that SBS Entities will elect to configure their electronic recordkeeping existing systems to meet the audit-trail requirement, given the benefits of that approach. Therefore, they may not need to build new electronic recordkeeping systems. All SBS Entities will need to be able to produce a record and, if applicable its audit trail, in a human readable and reasonably usable electronic format. In addition, either Designated Executive Officer or Designated Third Party undertakings will need to be filed with the Commission with respect to all SBS Entities (unlike with respect to broker-dealers, this is a new requirement). Also, if SBS Entities use a cloud service provider and a Traditional Undertaking from the provider has not been filed with the Commission, a Traditional or Alternative Undertaking will need to be filed. Since, as noted above, SBS Entities, unlike broker-dealers, were not subject to a requirement that their electronic recordkeeping systems be WORM compliant prior to the amendments being adopted in this document, the Commission anticipates that some SBS Entities may have to configure their existing electronic recordkeeping systems to either requirement. Based on staff experience and given the relative size and sophistication of SBS Entities, however, the Commission believes that twelve months after publication in the **Federal Register** will be sufficient time for SBS Entities to come into compliance with these new requirements.

For the foregoing reasons, the compliance date for the amendments to Rule 17a–4 is six months after the amendments are published in the **Federal Register** and the compliance date for the amendments to Rule 18a–6 is twelve months after the amendments are published in the **Federal Register**.

III. Designation of Broker-Dealer Examining Authorities

FINRA, which serves as the DEA for most broker-dealers, raised a concern with the proposal to eliminate the third-party undertakings requirement from Rule 17a–4(f).[230] This commenter stated if a broker-dealer refuses to provide records in the course of the examination or investigation, the commenter has ''the ability to obtain the records directly from the independent third party that has access to the records consistent with Exchange Act Rule 17a–4(f)(3)(vii).'' The commenter recommended that the Commission amend Rule 17a–4(i) to expressly identify a broker-dealer's DEA as an entity to whom the broker-dealer must make its records available and to whom the broker-dealer must promptly furnish a true, correct, complete and current hard copy of any or all or any part of such books and records.

As discussed above, the Traditional Undertaking set forth in Rule 17a–4(i) requires a third party who prepares or maintains Broker-Dealer Regulatory Records to file a written undertaking with the Commission signed by a duly authorized person.[231] The Traditional Undertaking must include a provision whereby the third party agrees, among other things, to permit examination of the records by representatives or *designees* of the Commission as well as to promptly furnish to the Commission or its *designee* true, correct, complete, and current hard copies of any or all or any part of such books and records. Further, the Alternative Undertaking also refers to *designees* of the Commission.[232] Finally, under the final amendments, the provisions of Rule 17a–4(f) setting forth the undertakings required of the Designated Executive Officer or Designated Third Party also refer to *designees* of the Commission.[233]

The broker-dealer examining authorities are examiners of broker-dealer compliance with the securities laws. Therefore, they play a critical role in supporting the Commission's oversight of broker-dealers. For these reasons, the broker-dealer examining authorities should have the same level of access to a broker-dealer's records as is afforded the Commission under Rules 17a–4(f) and 17a–4(i). Consequently, the Commission is hereby designating a broker-dealer's examining authorities as a Commission designee for the purposes of Rules 17a–4(f) and 17a–4(i).

IV. Paperwork Reduction Act

Certain provisions of the rule amendments being adopted in this release contain a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[234] The Commission submitted the proposed rule amendments and proposed new rules to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA and its implementing regulations.[235] The Commission's earlier PRA assessments have been revised to reflect the modifications to the rules and amendments from those that were proposed, as well as additional information and data now available to the Commission. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.[236] The titles and OMB control numbers for the collections of information are:

[230] *See* FINRA Letter.

[231] *See* section II.G of this release (discussing the Traditional Undertaking). *See also* paragraph (i)(1)(ii)(A) of Rule 17a–4, as amended (setting forth the Traditional Undertaking).

[232] *See also* paragraph (i)(1)(ii)(B) of Rule 17a–4, as amended (setting forth the Alternative Undertaking).

[233] *See* paragraph (f)(3)(v)(A) of Rule 17a–4, as amended.

[234] *See* 44 U.S.C. 3501 *et seq.*

[235] *See* 44 U.S.C. 3507; 5 CFR 1320.11.

[236] *See* 5 CFR 1320.11(l).

(1) Rule 17a–4—Records to be preserved by certain brokers and dealers (OMB control number 3235–0279); and

(2) Rule 18a–6—Records to be preserved by certain security-based swap dealers and major security-based swap participants (OMB control number 3235–0751).

The burden estimates contained in this section do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.

A. Summary of Collections of Information

1. Amendments to Rules 17a–4(f) and 18a–6(e)

Rule 17a–4 sets forth record preservation requirements applicable to broker-dealers, including broker-dealers also registered as SBSDs or MSBSPs.[237] Rule 18a–6 sets forth record preservation requirements applicable to SBS Entities that are not dually registered as broker-dealers.[238] The Commission is amending Rules 17a–4(f)[239] and 18a–6(e),[240] which prescribe requirements for broker-dealers and SBS Entities, respectively, that elect to preserve records electronically to comply with the record preservation requirements of Rules 17a–4 and 18a–6, respectively.

The amendments to Rule 17a–4(f) add an audit-trail alternative to the existing WORM requirement.[241] The amendments to Rule 18a–6(e) add a requirement that electronic recordkeeping systems used by nonbank SBS Entities, which currently do not have a WORM requirement, must comply with either the audit-trail requirement or the WORM requirement.[242]

Rule 17a–4(f) requires a broker-dealer to store separately from the original, on any medium acceptable under Rule 17a–4, a duplicate copy of a record for the requisite time period. Similarly, Rule 18a–6(e) requires that an SBS Entity store separately from the original a duplicate copy of a record stored on the electronic storage system for the requisite time period. These provisions require broker-dealers and SBS Entities to maintain a second copy of a record. The Commission proposed to amend both of these paragraphs to require the broker-dealer and the SBS Entity to maintain a backup set of records when records are preserved on an electronic recordkeeping system. Under the proposed new requirements, a broker-dealer or SBS Entity electing to use an electronic recordkeeping system would have been required to employ a second electronic recordkeeping system as a backup.

In response to comments received, the Commission is replacing these proposed requirements with a requirement that a broker-dealer or SBS Entity electing to use an electronic recordkeeping system must either: (1) include a backup electronic recordkeeping system that meets the other requirements for electronic recordkeeping systems and that retains the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4 (for broker-dealers) or Rules 18a–5 and 18a–6 (for SBS Entities) in accordance with the relevant rules in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or (2) have other redundancy capabilities that are designed to ensure access to the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4 (for broker-dealers) or Rules 18a–5 and 18a–6 (for SBS Entities).[243] The Commission is adding the ''other redundancy capabilities'' alternative to the proposed backup system requirement in response to comments that redundancy is a broader concept than a back-up recordkeeping system and will therefore give firms more flexibility than would a back-up recordkeeping system requirement without the alternative.

Rule 17a–4(f) also requires that, for every broker-dealer exclusively using electronic storage media for some or all of its record preservation, at least one third party, who has access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium under Rule 17a–4, must file with the examining authority for the broker-dealer certain undertakings that the third party will provide access to the broker-dealer's electronic records and provide them to the Commission and other securities regulators if requested. The proposed amendments to Rule 17a–4(f) would have eliminated the third-party access and undertakings requirements and replaced them with a requirement that a senior officer of the broker-dealer have the access and provide the necessary undertakings. In addition, the proposed amendments to Rule 18a–6(e), which does not have third-party access and undertakings requirements, would have added senior officer access and undertakings requirements analogous to that of Rule 17a–4(f) as proposed to be amended.

The amendments as adopted differ in two ways from the amendments as proposed.[244] First, the Commission is adopting the proposed senior officer access and undertakings requirements in both Rules 17a–4(f) and 18a–6(e); however, in response to comments, while the amendments as adopted require that one senior officer at the executive level (the Designated Executive Officer) execute the undertaking and bear the responsibility for fulfilling the obligations under the undertaking, they also allow the Designated Executive Officer to appoint in writing up to two employees (the ''designated officers'') who report directly or indirectly to the executive officer to act on behalf of the executive officer if the executive officer is not available to take the steps necessary to meet the executive officer's obligations under the undertaking. In addition, the Designated Executive Officer may appoint in writing up to three professionals (''designated specialists'') over whom the Designated Executive Officer and the designated officers have authority to take the steps necessary to access the records. Second, in response to comments, the Commission is retaining the existing third-party access and undertakings option as an alternative in Rule 17a–4(f) and adding the option of third-party access and undertakings to Rule 18a–6(e) as an alternative to the new Designated Executive Officer access and undertakings requirement of that rule, as amended. As such, under the amendments as adopted, the access and undertakings requirements of both Rules 17a–4(f) and 18a–6(e) may be fulfilled

[237] *See* 17 CFR 240.17a–4. As stated above, the term ''broker-dealer'' for the purposes of this release includes broker-dealers that are also registered as SBSDs or MSBSPs.

[238] *See* 17 CFR 240.18a–6. As stated above, the term ''SBS Entity'' for the purposes of this release refers to SBSDs and MSBSPs that are not also registered as broker-dealers.

[239] *See* Rule 17a–4(f) (setting forth the electronic record preservation requirements for broker-dealers).

[240] *See* Rule 18a–6(e) (setting forth the electronic record preservation requirements for SBS Entities).

[241] *See* section II.D.2. of this release (discussing these amendments in more detail).

[242] As defined above, the term ''nonbank SBS Entity'' refers to an SBS Entity that does not have a prudential regulator and the term ''bank SBS Entity'' refers to an SBS Entity that has a prudential regulator.

[243] *See* section II.D.6. of this release (discussing these amendments in more detail). Note that, as discussed above, the proposed amendments were to paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6, while the amendments as adopted are to paragraph (f)(2) of Rule 17a–4 and paragraph (e)(2) of Rule 18a–6. Although the placement of the rule text as adopted does not apply to bank SBS Entities (as opposed to the placement of the rule text as proposed), this does not alter the applicable PRA burden estimates for either rule.

[244] *See* section II.E.6. of this release (discussing these modifications in more detail).

by either a Designated Executive Officer or a Designated Third Party.

The Commission is amending Rule 18a–6 to remove, for bank SBS Entities, the requirements for electronic recordkeeping systems set forth in paragraph (e)(2) of Rule 18a–6.[245] However, the other provisions of paragraph (e) of Rule 18a–6, as amended, continue to apply to all SBS Entities.

The Commission is amending Rule 17a–4(f) to move the requirements for broker-dealers using micrographic media to new paragraph (f)(4).[246] Rule 18a–6(e) does not provide for retaining records using micrographic media.

The amendments to Rule 17a–4(f) eliminate a requirement that the broker-dealer notify its DEA before employing an electronic recordkeeping system.[247] Rule 18a–6(e) does not have a similar DEA notification requirement.

2. Amendments to Rules 17a–4(i) and 18a–6(f)

Rules 17a–4(i) and 18a–6(f) require a third party who prepares or maintains the regulatory records of a broker-dealer or SBS Entity (regardless of whether the records are in paper or electronic form) to file a written undertaking with the Commission signed by a duly authorized person. The undertaking must include a provision whereby the third-party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records. Some broker-dealers and SBS Entities maintain their electronic recordkeeping systems and associated electronic records on servers or other storage devices that are owned or operated by a third party (*e.g.,* a cloud service provider). The broker-dealer or SBS Entity controls the electronic recordkeeping system and the access to the electronic records preserved on the system. Consequently, the third parties state that they cannot provide the undertaking required under Rules 17a–4 and 18a–6.

The Commission is amending the Rules 17a–4(i) and 18a–6(f) to address this development in electronic recordkeeping practices.[248] Under the amendments, the third party may provide an alternative undertaking (*i.e.,* the Alternative Undertaking) that is tailored to how cloud service providers hold electronic records for broker-dealers and SBS Entities. The use of the Alternative Undertaking is subject to certain conditions, including that the records are maintained on an electronic recordkeeping system and the broker-dealer or SBS Entity has independent access to the records meaning, among other things, the broker-dealer can access the records without the need of any intervention of the third party. Consequently, the Alternative Undertaking cannot be used if the records maintained and preserved by the third party are not maintained and preserved by means of an electronic recordkeeping system (*e.g.,* it cannot be used if the records are in paper form). It also cannot be used if the broker-dealer or SBS Entity must rely on the third party to take an intervening step to make the records available to the broker-dealer or SBS Entity (*e.g.,* it cannot be used if the broker-dealer or SBS Entity must ask the third party to transfer copies of the records to the broker-dealer or SBS Entity or must ask the third party to first decrypt the records before they can be accessed).

In the Alternative Undertaking, the third party must, among other things, acknowledge that the records are the property of the broker-dealer or SBS Entity and that the broker-dealer or SBS Entity has represented to the third party that the broker-dealer or SBS Entity: (1) is subject to rules of the Commission governing the maintenance and preservation of certain records; (2) has independent access to the records maintained by the third party; and (3) consents to the third party fulfilling the obligations set forth in the undertaking. Further, the third party must undertake to facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Commission as permitted under the law. In the case of a broker-dealer, the third party must also undertake to facilitate within its ability, and not impede or prevent, a trustee appointed under SIPA to liquidate the broker-dealer in accessing, downloading, or transferring the records as permitted under the law.

3. Amendments to Rules 17a–4(j) and 18a–6(g)

Rule 17a–4(j) requires broker-dealers to furnish promptly to the Commission legible, true, complete, and current copies of those records of the firm that are required to be preserved under Rule 17a–4 or any other record of the firm that is subject to examination under Section 17(b) of the Exchange Act. Rule 18a–6(g) requires SBS Entities to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the firm that are required to be preserved under Rule 18a–6, or any other records of the firm subject to examination or required to be made or maintained pursuant to Section 15F of the Exchange Act.

The Commission is amending the prompt production of records requirements of Rules 17a–4(j) and 18a–6(g).[249] The amendments to Rules 17a–4(j) and 18a–6(g) require a broker-dealer or SBS Entity, respectively, to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant to Rules 17a–4(f) and 18a–6(e), respectively, in a reasonably usable electronic format, if requested by a representative of the Commission.

The Commission did not receive any comments specifically pertaining to the PRA estimates set forth in the proposing release.

B. Proposed Use of Information

The requirements of Rules 17a–4(f) and 18a–6(e), including the amendments to these rules being adopted in this document, are designed, among other things, to promote the prudent operation of broker-dealers and SBS Entities and to assist the Commission, SROs, and state securities regulators in conducting effective examinations.[250] The amendments to Rules 17a–4(j) and (i) and 18a–6(g) and (f) are designed to facilitate examinations and other regulatory reviews by making records accessible and examinations more efficient. Taken as a whole, the collections of information under the amendments to Rules 17a–4(f), (i), and (j) and 18a–6(e), (g), and (f) are designed to promote the prudent operation of broker-dealers and SBS Entities and facilitate the examinations of broker-dealers and SBS Entities by the Commission and other relevant securities regulators (*e.g.,* SROs and state securities regulators).

[245] *See* section II.D.1. of this release (discussing these amendments in more detail).

[246] *See* section II.F. of this release (discussing these amendments in more detail).

[247] *See* section II.C. of this release (discussing these amendments in more detail).

[248] *See* section II.G. of this release (discussing these amendments in more detail).

[249] *See* section II.H. of this release (discussing these amendments in more detail).

[250] *See, e.g., Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* Exchange Act Release No. 44992 (Oct. 26, 2001), 66 FR 55818 (Nov. 2, 2001) (''The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers'' (footnote omitted)).

C. Respondents

As of December 31, 2021, there were 3,508 broker-dealers registered with the Commission.[251] As of July 31, 2022, 48 SBSDs have registered with the Commission, while no MSBSPs have registered with the Commission.[252] Six of the SBSDs are existing broker-dealers and, therefore, are included in the 3,508 broker-dealers. Twenty-one of the SBSDs are applying substituted compliance with respect to the requirements of Rule 18a–6.[253] Two SBSDs are using the alternative compliance mechanism of 17 CFR 240.18a–10 (Exchange Act Rule 18a–10) and, therefore, complying with the CFTC's recordkeeping rules.[254] This leaves nineteen SBSDs that are subject to Rule 18a–6 and, therefore, will be subject to the amendments to that rule. Seventeen of these SBSDs have a prudential regulator and also are registered with the CFTC as swap dealers. Because these seventeen SBSDs have a prudential regulator, they will not be subject to paragraph (e)(2) of Rule 18a–6. This leaves two SBSDs that will be subject to paragraph (e)(2) of Rule 18a–6. These SBSDs are not dually registered with the CFTC.

The following table summarizes the estimated number of broker-dealers (respondents) that will be subject to the amendments to Rule 17a–4 and the number of SBSDs (respondents) that will be subject to the amendments to Rule 18a–6 and those that will be specifically subject to paragraph (e)(2) of Rule 18a–6 (*i.e.,* non-bank SBSDs).

Type of registrant	Number
Broker-dealers (including SBSDs dually registered as broker-dealers)	3,508
SBSDs that will be subject to Rule 18a–6, as amended	19
SBSDs that will be subject to Rule 18a–6(e)(2), as amended	2

Based upon the recent experience of the staff, the Commission estimates that approximately 95% of the broker-dealers, including broker-dealers that will be dually registered as SBS Entities, (*i.e.,* 3,333 broker-dealers) use electronic recordkeeping systems; all of these firms are expected to continue to use electronic recordkeeping systems pursuant to the requirements of Rule 17a–4(f), as amended. The Commission believes that all SBSDs that are subject to Rule 18a–6(e) (*i.e.,* 19 SBSDs) use electronic recordkeeping systems pursuant to the requirements of Rule 18a–6(e) and will continue to do so under the amendments.

Finally, based on staff experience, the Commission estimates that 500 of the broker-dealers and 10 of the SBSDs currently employ cloud service providers for electronic recordkeeping purposes and will be required to obtain the Alternative Undertaking from a cloud service provider (*i.e.,* an undertaking tailored to how cloud service providers hold electronic records for broker-dealers and SBSDs) discussed above. Further, based on staff experience and discussions with the industry, the Commission estimates that the five different cloud service providers currently used by broker-dealers for electronic recordkeeping purposes will need to execute these 510 Alternative Undertakings and that each has approximately an equal number of broker-dealer and SBSD clients. Therefore, the Commission estimates that each cloud service provider will need to execute 102 Alternative Undertakings.

D. Total Initial and Annual Reporting Burdens

1. Amendments to Rules 17a–4(f) and 18a–6(e)

Rules 17a–4(f) and 18a–6(e) currently impose collection of information requirements that result in initial and annual time burdens for broker-dealers and SBSDs. The amendments to these rules will both add to and decrease the current time burden estimates as explained below.

The amendments to Rule 17a–4(f) provide an audit-trail alternative to the current WORM requirement for electronic recordkeeping systems used by broker-dealers to meet the record preservation requirements of Rule 17a–4.[255] Consequently, broker-dealers may continue to meet the requirements of the rule by using any WORM-compliant electronic recordkeeping system they employ today. The amendments to Rule 18a–6(e) add a requirement that electronic recordkeeping systems used by nonbank SBSDs to comply with the record preservation requirements of Rule 18a–6 must meet either the audit-trail or WORM requirement.[256]

The Commission believes that few, if any, broker-dealers or nonbank SBSDs that use electronic recordkeeping systems are not currently compliant with the rules, as amended, either because they currently use an electronic recordkeeping system that meets the WORM requirement or because they currently use one that can meet the proposed audit-trail requirement. Indeed, the Commission believes that some broker-dealers are currently using a modern, audit-trail compliant electronic recordkeeping system for their own business purposes while simultaneously maintaining a WORM-compliant system solely for the purpose of complying with the requirements of Rule 17a–4(f).

A broker-dealer that does not preserve records electronically will incur initial costs to build an electronic recordkeeping system that meets either the WORM requirement or the audit-trail requirement or will have the initial burden of hiring a vendor to provide the service. A broker-dealer that preserves records electronically using a WORM-compliant electronic recordkeeping system will have an initial burden to build an electronic recordkeeping system that meets the audit-trail requirement, if it elects to use that alternative. An SBSD subject to the requirements of paragraph (e)(2) of Rule 18a–6 will have an initial burden either to build an electronic recordkeeping system that meets either the WORM requirement or the audit-trail requirement or to hire a vendor to provide the service. Similarly, on an ongoing basis, the broker-dealer or SBSD will be required to expend financial or human resources to maintain their recordkeeping systems to comply with the audit-trail or WORM requirements.

Based upon information provided to the Commission by the securities industry, the Commission estimates that the initial cost to build and implement a WORM-compliant electronic recordkeeping system for a large broker-dealer or SBS Entity is $10 million, with an additional cost of $1.2 million annually to maintain the system.[257] Based on feedback from the securities industry, the Commission believes that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirements and the ongoing cost to maintain the system will be substantially lower than the

[251] This estimate is derived from broker-dealer FOCUS filings as of December 31, 2021, as described in greater detail in the economic baseline, and is inclusive of seven OTC derivatives dealers affected by the final amendments.

[252] *See List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants,* available at: *https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants.*

[253] *See Substituted Compliance Notices,* available at: *https://www.sec.gov/tm/Substituted-compliance-Notices.*

[254] *See* 17 CFR 240.18a–10.

[255] *See* section II.D.2. of this release (discussing these amendments in more detail).

[256] *Id.*

[257] *See* Rule 17a–4(f) Rulemaking Petition Addendum at 4–5.

analogous costs that would be incurred with respect to a WORM-compliant system.[258] Consequently, the Commission estimates that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirement for a large broker-dealer is $1,000,000, with an additional cost of $120,000 annually to maintain the system.

As of December 31, 2021, there were 854 broker-dealers with assets equal to or exceeding $10 million and two SBSDs that will be subject to paragraph (e)(2) of Rule 18a–6. The Commission does not believe any of these firms will elect to build a WORM-compliant electronic recordkeeping system. Moreover, the Commission estimates that most of these firms have electronic recordkeeping systems that meet the audit-trail requirement or that could be configured to meet that requirement without the need to build a new system. The Commission estimates that 20 of these firms will elect to modernize their recordkeeping process by building a new electronic recordkeeping system to meet the audit-trail requirement for an initial one-time industry cost burden of $20,000,000 and an annual cost burden of $2,400,000.

The Commission estimates that the cost for the 2,654 broker-dealers with less than $10,000,000 in total assets to build and maintain an electronic recordkeeping system that meets the proposed audit-trail requirement will be significantly less than the $1,000,000 initial and $120,000 annual costs estimated for the 854 larger broker-dealers and the two SBSDs that will be subject to paragraph (e)(2) of Rule 18a–6. Consequently, the Commission estimates that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirement for these smaller broker-dealers is $100,000, with an additional cost of $12,000 annually to maintain the system. The Commission estimates that most of the 2,654 broker-dealers with less than $10,000,000 in total assets will continue to preserve records in the manner they do today: using a WORM-compliant system, using micrographic media, or maintaining paper records. The Commission estimates that 80 of these firms will elect to build a new electronic recordkeeping system to meet the audit-trail requirement for an initial one-time industry cost burden of $8,000,000 and an annual cost burden of $960,000.

The Commission believes that broker-dealers and SBSDs will incur an initial burden and ongoing annual burden in order to meet the requirement that a broker-dealer or SBS Entity electing to use an electronic recordkeeping system either: (1) include a backup electronic recordkeeping system that meets the other requirements for electronic recordkeeping systems and that retains the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4 (for broker-dealers) or Rules 18a–5 and 18a–6 (for SBS Entities) in accordance with the relevant rules in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or (2) have other redundancy capabilities that are designed to ensure access to the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4 (for broker-dealers) or Rules 18a–5 and 18a–6 (for SBS Entities).[259] This requirement could be fulfilled by a backup electronic recordkeeping system (as proposed), and the Commission believes these burdens and costs will be substantially less than the burdens and costs of the primary electronic recordkeeping systems because of the benefit of economies of scale for the backup system whereby common technology and personnel may be used for both systems. In addition, the Commission believes that some broker-dealers or SBS Entities electing to use an electronic recordkeeping system would employ a different means of ensuring they meet the redundancy requirement than building a backup system. The Commission estimates that the costs and burdens for the 854 larger broker-dealers and the two SBSDs that are subject to paragraph (e)(2) of Rule 18a–6 will be $250,000 in initial burdens and costs and $30,000 in annual burdens and costs. Further, the Commission expects that the broker-dealers and SBSDs that have electronic recordkeeping systems that could meet the audit-trail requirement or that could be configured to meet that requirement without the need to build a new system also maintain backup recordkeeping systems for business continuity purposes. Therefore, the Commission believes that initial and annual costs will be incurred by the 20 firms that elect to build a new electronic recordkeeping system that meets that proposed audit-trail requirement. Consequently, the Commission estimates that the industry-wide costs and burdens for these firms will be $5,000,000 in initial costs and burdens and $600,000 in annual costs and burdens.

The Commission estimates that the costs and burdens incurred by the 80 smaller broker-dealers that will build electronic recordkeeping systems to meet the audit-trail requirement and, therefore, will need to ensure that they meet the backup system or redundancy requirement, will be substantially less than the costs and burdens incurred by the larger broker-dealers. The Commission estimates that these firms will incur initial costs and burdens of $25,000 and ongoing annual costs and burdens of $3,000. Therefore, the Commission estimates that the industry-wide costs and burdens for these firms will be $2,000,000 in initial costs and burdens and $240,000 in ongoing annual costs and burdens.

The amendments to Rule 17a–4(f) replace the third-party access and undertakings requirement with a requirement to either continue to use a Designated Third Party for the access and undertakings requirement or instead name a Designated Executive Officer of the broker-dealer with the necessary authority and access to provide the necessary undertakings.[260] Based on the Commission's most recent information submitted to the OMB in connection with the renewal of Rule 17a–4, for broker-dealers that elect the latter option, this will result in an estimated elimination of an annual cost of less than $5,000 that the broker-dealer must incur in paying a third party to agree to perform this service. Rule 18a–6(e) does not contain a third-party undertakings requirement; however, the amendments to the rule add a requirement that either a Designated Third Party or a Designated Executive Officer complete the access and undertakings requirements in a manner analogous to the requirements of Rule 17a–4(f), as amended.[261] The change in the format of the undertakings will require all broker-dealers to obtain new undertakings regardless of whether

[258] *See e.g.* Rule 17a–4(f) Rulemaking Petition at 6–7.

[259] *See* section II.D.6. of this release (discussing these amendments in more detail).

[260] Throughout this section IV, to monetize the internal costs the Commission staff used data from the SIFMA publications, Management and Professional Earnings in the Securities Industry—2013, and Office Salaries in the Securities Industry—2013, modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. These figures have been adjusted for inflation through the end of 2020 using data published by the Bureau of Labor Statistics.

[261] As noted above, paragraph (f) of Rule 18a–6 includes a requirement that if the records required to be maintained and preserved by the SBS Entity (whether electronic or otherwise) are prepared or maintained by a third party on behalf of the SBS Entity, the third party must file undertakings with the Commission. *See* paragraph (f) of Rule 18a–6.

they elect to replace their Designated Third Party with a Designated Executive Officer. Therefore, the Commission estimates that this change and, in the case of SBSDs, the addition of a Designated Executive Officer or Designated Third Party undertakings requirement, will result in a one-time initial burden of one hour per firm, for a total of 3,333 hours for an initial cost of $1,656,501 under Rule 17a–4(f) and 19 hours for an initial cost of $9,443 for SBSDs under Rule 18a–6(e).[262] The Commission also believes that the Designated Third Party or Designated Executive Officer undertakings requirement will add an annual burden of one hour per firm, for a total of 3,333 hours for broker-dealers collectively,[263] resulting in a total ongoing cost of $1,656,501, and 19 hours for a total ongoing cost of $9,443 for SBSDs collectively.[264]

The amendments move existing requirements for broker-dealers using micrographic media from paragraph (f)(3)(i) of Rule 17a–4 to new paragraph (f)(4) of Rule 17a–4, but do not change the substantive requirements. The amendments do not propose a micrographic media alternative for SBS Entities for the reasons described above. The Commission does not believe the amendments relating to micrographic media will have any impact on the burden experienced by broker-dealers or SBS Entities.

The Commission anticipates that eliminating the application of paragraph (e)(2) of Rule 18a–6 to the 17 SBSDs that have a prudential regulator and are subject to Rule 18a–6 will result in a decrease of 100 hours per firm on an annual basis, or 1,700 hours per year for all firms affected by the amendment, for an ongoing cost savings of $537,000 per year for all affected firms.[265]

Finally, based upon information provided to the Commission from FINRA staff, the Commission believes that the elimination of the DEA notification requirement will decrease the industry-wide burden of compliance by one hour per broker-dealer submitting the notice to its DEA, or approximately 433 hours per year, for an ongoing cost savings of $136,828 [266] per year for the industry.

2. Amendments to Rules 17a–4(j) and 18a–6(g)

The amendments to Rules 17a–4(j) and 18a–6(g) require a broker-dealer or SBS Entity, respectively, to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant to Rules 17a–4(f) and 18a–6(e), respectively, in a reasonably usable electronic format, if requested by a representative of the Commission. The Commission does not believe that these amendments will change the initial or annual hourly burden for broker-dealers or SBS Entities.

3. Amendments to Rules 17a–4(i) and 18a–6(f)

The amendments to Rules 17a–4(i) and 18a–6(f) require broker-dealers and SBS Entities that use cloud service providers to draft and obtain an executed the Alternative Undertaking. The Commission believes that 500 of the broker-dealers and 10 of the SBSDs will be required to obtain the alternative undertaking from cloud service providers and that this will result in a one-time initial burden of one hour per dealer, for a total of 510 hours and an initial cost of $253,470.[267] In addition, the Commission estimates that the need for the five cloud service providers to review and execute the Alternative Undertaking will result in a one-time initial burden of 102 hours per provider, for a total of 510 hours and an initial cost of $253,470.[268]

The estimated hourly burdens and estimated costs associated with the final amendments to Rules 17a–4 and 18a–6 are summarized in the following tables:

SUMMARY OF HOURLY BURDENS

Name of information collection	Type of burden	Number of respondents	Initial hourly burden per respondent	Ongoing hourly burden per respondent	Initial hourly burden for all respondents	Annual hourly burden for all respondents
Third party or Designated Executive Officer Undertaking-BDs.	Recordkeeping	3,333	1	1	3,333	3,333
Third party or Designated Executive Officer Undertaking-SBSDs.	Recordkeeping	19	1	1	19	19
Elimination of electronic recordkeeping requirements for bank SBSDs.	Recordkeeping	17	(100)	(100)	(1,700)	(1,700)
Elimination of the DEA notification requirement for BDs.	Recordkeeping	433	(1)	(1)	(433)	(433)
Alternative undertaking—BDs and SBSDs.	Recordkeeping	510	1	0	510	0
Alternative undertaking—Cloud Service Providers.	Recordkeeping	5	102	0	510	0

[262] One-time initial cost for broker-dealers: 3,333 hours × $497 per hour (at the controller hourly rate) = $1,656,501. One time initial cost for SBSDs: 19 hours × $497 per hour (at the controller hourly rate) = $9,443.

[263] The Commission believes that while the existing third-party requirement is an external burden, the senior officer requirement would be an internal burden required to be accounted for in this section.

[264] Ongoing cost for broker-dealers: 3,333 hours × $497 per hour (at the controller hourly rate) = $1,656,501. Ongoing cost for SBSDs: 19 hours × $497 per hour (at the controller hourly rate) = $9,443. As discussed above, each affected entity that names a Designated Executive Officer to make undertakings instead of a third party may experience a cost savings of less than $5,000 from not having to incur the payment to a third party agreeing to perform this service.

[265] 1,700 hours × $316 per hour (at the compliance manager rate) = $537,000.

[266] 433 hours × $316 per hour (at the compliance manager rate) = $136,828.

[267] One-time initial cost for broker-dealers and SBSDs: 510 hours × $497 per hour (at the controller hourly rate) = $253,470.

[268] One-time initial cost for five cloud service providers: (102 hours × five cloud service providers) × $497 per hour (at the controller hourly rate) = $253,470.

SUMMARY OF COST BURDENS

Name of information collection	Type of burden	Number of respondents	Initial cost per respondent	Ongoing cost per respondent	Initial cost for all respondents	Annual cost for all respondents
Large BD and SBS Entity cost to build and implement audit trail alternative system.	Recordkeeping	20	$1,000,000	$120,000	$20,000,000	$2,400,000
Small BD cost to build and implement audit trail alternative system.	Recordkeeping	80	100,000	12,000	8,000,000	960,000
Large BD and SBS Entity cost to build and implement redundant recordkeeping system.	Recordkeeping	20	250,000	30,000	5,000,000	600,000
Small BD cost to build and implement redundant recordkeeping system.	Recordkeeping	80	25,000	3,000	2,000,000	240,000
Third party or Designated Executive Officer Undertaking—BDs.	Recordkeeping	3,333	497	497	1,656,501	1,656,501
Third party or Designated Executive Officer Undertaking—SBSDs.	Recordkeeping	19	497	497	9,443	9,433
Elimination of electronic recordkeeping requirements for bank SBSDs.	Recordkeeping	17	($31,600)	($31,600)	($537,000)	($537,000)
Elimination of the DEA notification requirement for BDs.	Recordkeeping	433	($316)	($316)	($136,828)	($136,828)
Alternative undertaking required—BDs and SBSDs.	Recordkeeping	510	497	0	253,470	0
Alternative undertaking required—cloud service providers.	Recordkeeping	5	50,694	0	253,470	0

E. Collection of Information is Mandatory

The collections of information pursuant to the amendments are mandatory, as applicable, for broker-dealers and SBS Entities.

F. Confidentiality of Responses to Collection of Information

A broker-dealer or SBS Entity requested by the Commission to produce records retained electronically pursuant to the requirements of Rule 17a–4 or 18a–6 can request confidential treatment of the information.[269] If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.[270]

G. Retention Period for Recordkeeping Requirements

Rule 17a–4, as amended, specifies the required retention periods for records required to be made and preserved by a broker-dealer, whether electronically or otherwise.[271] Rule 18a–6, as amended, specifies the required retention periods for records required to be made and preserved by an SBS Entity, whether electronically or otherwise.[272] Many of the required records must be retained for three years; certain other records must be retained for longer periods.[273]

V. Economic Analysis

The Commission is mindful of the economic effects, including the costs and benefits, of the final amendments. Section 3(f) of the Exchange Act provides that whenever the Commission is engaged in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[274] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[275] Exchange Act Section 23(a)(2) also provides that the Commission shall not adopt any rule which would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The analysis below addresses the likely economic effects of the final amendments, including the anticipated and estimated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives. Many of the benefits and costs discussed below are difficult to quantify. For example, the Commission cannot quantify the extent to which some broker-dealers and SBS Entities may need to upgrade existing electronic recordkeeping systems to meet the audit-trail requirement or the degree to which broker-dealers and SBS Entities may currently pass along recordkeeping costs to customers and counterparties. While the Commission has attempted to quantify economic effects where possible, much of the

[269] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's website at *http://www.sec.gov/foia/howfo2.htm#privacy*.

[270] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[271] *See* Rule 17a–4, as amended.

[272] *See* Rule 18a–6, as amended.

[273] *See* Rules 17a–4 and 18a–6, as amended.

[274] *See* 15 U.S.C. 78c(f).

[275] *See* 15 U.S.C. 78w(a)(2).

discussion of economic effects is qualitative in nature.

A. Baseline

To assess the economic effects of the amendments, the Commission is using as the baseline the broker-dealer and security-based swap markets as they exist at the time of this release, including applicable rules the Commission has already adopted, but excluding rules the Commission has proposed but not yet finalized.

With respect to broker-dealers, the regulatory baseline includes Rule 17a–4(f), (i), and (j). In addition, as discussed above, the Commission has also issued interpretations of Rule 17a–4(f) for broker-dealers.[276] With respect to SBS Entities, the regulatory baseline includes the statutory provisions pursuant to the Dodd-Frank Act and rules adopted by the Commission, compliance with which is required. This includes rules adopted by the Commission in the following adopting releases: the intermediary definitions release;[277] cross-border release;[278] security-based swap entity registration release;[279] U.S. activity release;[280] business conduct release;[281] trade acknowledgment release;[282] capital, margin, and segregation release;[283] and the recordkeeping and reporting release adopting Rule 18a–6(e), (f), and (g).[284]

The following sections discuss available data about the security-based swap market, affected SBS Entities, dual registrants, other security-based swap market participants, participant domiciles, and broker dealer activity.

1. Broker-Dealers

The market for broker-dealer services encompasses a relatively small set of large and medium sized broker-dealers and thousands of smaller broker-dealers competing for niche or regional segments of the market. The market for broker-dealer services includes many different markets for a variety of services related to the securities business, including (1) managing orders for customers and routing them to various trading venues; (2) providing advice to customers that is in connection with and reasonably related to their primary business of effecting securities transactions; (3) holding customers' funds and securities; (4) handling clearance and settlement of trades; (5) intermediating between customers and carrying/clearing brokers; (6) dealing in corporate debt and equities, government bonds, and municipal bonds, among other securities; (7) privately placing securities; and (8) effecting transactions in mutual funds that involve transferring funds directly to the issuer.[285] Some broker-dealers may specialize in just one narrowly defined service, while others may provide a wide variety of services.

Based on an analysis of FOCUS filings as of December 2021, there were approximately 3,508 registered broker-dealers with over 240 million customer accounts.[286] In total, these broker-dealers have over $5 trillion in total assets as reported on Form X–17A–5.[287] More than two-thirds of all broker-dealer assets and just under one-third of all customer accounts are held by the 21 largest broker-dealers, as shown in Table 1.[288]

TABLE 1—REGISTERED BROKER-DEALERS AS OF DECEMBER 2021

Size of broker-dealer (total assets)	Total number of BDs	Aggregate total assets ($ bln)	Aggregate number of customer accounts
>$50 billion	21	3,682	75,808,084
$1 billion to $50 billion	124	1,581	153,243,391
$500 million to $1 billion	30	22	518,545
$100 million to $500 million	147	31	9,559,082
$10 million to $100 million	532	19	128,669
$1 million to $10 million	1,065	4	885,269
<$1 million	1,589	0.5	10,854
Total	3,508	5,338	240,153,894

[276] *See* Section II.D discussing Rule 17a–4(f) Interpretation. *See SBSD/MSBSP Recordkeeping Adopting Release,* 84 FR at 68568. As discussed in Section II.D.2, the Commission confirms that a broker-dealer or nonbank SBS Entity may rely on those interpretations with respect to meeting the WORM requirement of Rule 17a–4(f) or 18a–6(e), as amended.

[277] *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,''* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[278] *See Application of ''Security-Based Swap Dealer'' and ''Major Security-Based Swap Participant'' Definitions to Cross-Border Security-Based Swap Activities,* Exchange Act Release No. 72372 (June 25, 2014, 79 FR 47278, 47359 (Aug. 12, 2014).

[279] *See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 75611 (Aug. 5, 2015), 80 FR 48964, 48989 (Aug. 14, 2015).

[280] *See Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception,* Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598 (Feb. 19, 2016).

[281] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29960, 30081 (May 13, 2019).

[282] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 78011 (Jun. 8, 2016), 81 FR 39808, 30143–44 (Jun. 17, 2016).

[283] *See* SBSD/MSBSP Capital, Margin, and Segregation Adopting Release, 84 FR 43872.

[284] *See* SBSD/MSBSP Recordkeeping Proposing Release, 84 FR 68550.

[285] *See Regulation Best Interest: The Broker-Dealer Standard of Conduct,* Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318, 33406 (July 12, 2019). For simplifcation, the Commission presents this analysis as if the market for broker-dealer services encompasses one broad market with multiple segments, even though, in terms of competition, it could also be discussed in terms of numerous interrelated markets.

[286] The data is obtained from FOCUS filings as of December 2021. There may be a double-counting of customer accounts among, in particular, the larger broker-dealers as they may report introducing broker-dealer accounts as well in their role as clearing broker-dealers. Customer Accounts includes both broker-dealer and investment adviser accounts for dual-registrants.

[287] Assets are estimated by Total Assets (allowable and non-allowable) from Part II of the FOCUS filings (Form X–17A–5 Part II and Part IIA, *available at https://www.sec.gov/files/formx-17a-5_2.pdf*) and correspond to balance sheet total assets for the broker-dealer. The Commission does not have an estimate of the total amount of customer assets for broker-dealers because that information is not included in FOCUS filings. The Commission estimates broker-dealer size from the total balance sheet assets as described above.

[288] Approximately $5.26 trillion of total assets of broker-dealers (98.6%) are at broker-dealers with total assets in excess of $1 billion.

The Commission estimates that 40 broker-dealers may be dually registered with the CFTC as futures commission merchants as of December 31, 2021.[289] In addition to the above estimates of affected broker-dealers, which covers broker-dealers that are members of SROs, over-the-counter (''OTC'') derivatives dealers will also be affected by the recordkeeping amendments. The Commission estimates that seven registered OTC derivatives dealers will be impacted by the amendments to Rule 17a–4.

2. Security-Based Swap Entities

Final SBS Entity registration rules have been adopted and compliance was required as of November 1, 2021.[290] As of April 30, 2022, there are 48 entities registered with the Commission as SBSDs, and no entities have registered as MSBSPs.[291]

The numerous financial markets are integrated, often attracting the same market participants that trade across corporate bond, swap, and security-based swap markets, among others. In part, this reflects the relationship between single-name credit default swap (''CDS'') contracts, which are security-based swaps, and index CDS contracts, which may be swaps or security-based swaps. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts that are contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, prices of these products depend upon one another,[292] creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Of the 19 SBSDs subject to Rule 18a–6(e), 17 have a prudential regulator and are dually registered with the CFTC as swap dealers.[293] Because these 17 SBSDs have a prudential regulator, they are not subject to paragraph (e)(2) of Rule 18a–6, which sets forth the technical requirements for electronic recordkeeping systems (including the WORM and audit trail requirements). Thus, only two SBSDs will be subject to the WORM or audit trail requirement and these SBSDs are not also registered with the CFTC.

3. Recordkeeping Practices of Market Participants

Notwithstanding the Commission's 2003 and 2019 interpretations of the WORM requirement (*i.e.,* that it can be met with software solutions) described above,[294] the Commission understands that some affected broker-dealers maintain electronic recordkeeping systems used daily for business purposes and separate electronic recordkeeping systems used to meet the WORM requirement. The Commission does not have data regarding the number of affected broker-dealers that maintain separate electronic recordkeeping systems for these purposes or data sufficient for the Commission to evaluate the likelihood that affected broker-dealers maintain separate electronic recordkeeping systems for business purposes that do or do not satisfy the WORM requirement. As a result, the Commission cannot estimate the frequency with which separate electronic recordkeeping systems are maintained for these purposes. However, as discussed in Section IV, the Commission believes that few, if any, broker-dealers or nonbank SBSDs that use electronic recordkeeping systems are not currently compliant with the rules, as amended, either because they currently use an electronic recordkeeping system that meets the WORM requirement or because they currently use one that can meet the proposed audit-trail requirement. Indeed, some broker-dealers may currently be using a modern, audit-trail compliant electronic recordkeeping system for their own business purposes while simultaneously maintaining a WORM-compliant system solely for the purpose of complying with the requirements of Rule 17a–4(f).

As discussed in Section II.I, the Commission understands that broker-dealers themselves may need to have access to—and the ability to read—their own records retained by means of an electronic recordkeeping system. Thus, most, if not all, broker-dealer electronic records are produced in a human readable and reasonably usable electronic format.

The Commission understands that third-party vendors developed software-based solutions designed to meet the WORM requirement of Rule 17a–4(f).[295] However, affected broker-dealers do not commonly use such record systems for business purposes: broker-dealers have explained to Commission staff that the electronic recordkeeping systems used for business purposes are dynamic, updated constantly (*e.g.,* with each new transaction or position), and easily accessible for retrieving records, whereas WORM databases are more akin to static ''snapshots'' of the records at a point in time and are less accessible for business purposes. As discussed in Section II.D.2 above, the Commission believes that affected broker-dealers generally deploy an electronic recordkeeping system that serves no purpose other than to hold records in a manner that meets the Commission's regulatory requirements for electronic recordkeeping systems.[296] The Commission also believes that some affected SBS Entities currently have systems complying with the electronic recordkeeping requirements under Rule 18a–6 as it presently stands, which does not include a WORM or audit-trail requirement.[297]

The Commission understands that, as discussed above, some broker-dealers and SBS Entities maintain their electronic recordkeeping systems and associated electronic records on servers or other storage devices that are owned or operated by third parties (*e.g.,* cloud

[289] Using FOCUS Report data as of December 31, 2021, there are 40 broker-dealers that report commodity futures account activity in ''Part II: Customer's Regulated Commodity Futures Accounts.''

[290] *See Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants, available at https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.*

[291] *See* section V.C. of this release (discussing the number of SBS Entities that would be subject to the final rules). *See also* Proposing Release, 86 FR at 68315–16 for additional information regarding the security-based swap market.

[292] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and security-based swaps. *See, e.g.,* George Casella & Roger L. Berger, Statistical Inference 171 (2nd ed. 2002).

[293] *See* section VI.F. of this release (discussing the CFTC's electronic recordkeeping rules). *See also* section V.C. of this release (discussing the number of SBSDs that would be subject to the final rules).

[294] *See* sections I.B.1. and II.D. of this release (discussing the interpretations and broker-dealers' response to them).

[295] *See, e.g.,* 17a–4, LLC Letter; NCC Group Letter; RegEd Letter.

[296] *See* section II.D of this release (discussing broker-dealers' use of WORM compliant electronic recordkeeping systems).

[297] As noted above in section II.D. of this release, it is the Commission's understanding that electronic recordkeeping systems used by nonbank SBS Entities as well as by broker-dealers for business purposes can be configured to meet the audit-trail requirement.

service providers), while the broker-dealer or SBS Entity retains control of the electronic recordkeeping system and access to the electronic records preserved on the system. The Commission understands that such arrangements are commonly governed by contractual agreements between broker-dealers or SBS Entities and their cloud service providers. Under Rules 17a–4 and 18a–6, third parties who prepare or maintain the regulatory records of a broker-dealer or SBS Entity are required to file a written undertaking with the Commission. The undertaking must include a provision whereby the third party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

Finally, as discussed in Section V.A.2 above, a number of affected entities are dually registered with the CFTC as swap dealers. Under the CFTC's electronic recordkeeping rule, affected entities must configure their recordkeeping systems and have policies and procedures governing those systems that are designed to prevent records from being altered or erased.

B. Benefits of the Amendments

The amendments are intended to modernize the SBS Entity and broker-dealer recordkeeping rules given technological changes over the last two decades and the Commission has received a number of comments in support of the benefits of these amendments.[298] The Commission continues to believe that by specifying that nonbank SBS Entities [299] and broker-dealers may satisfy their electronic recordkeeping obligations through the WORM requirement or an audit-trail alternative, the amendments may result in nonbank SBS Entities or broker-dealers updating electronic recordkeeping systems in ways that would lower compliance costs. For example, nonbank SBS Entities or broker-dealers may, among other things, reduce or eliminate duplicative compliance systems in circumstances where they currently maintain separate electronic recordkeeping systems primarily due to, as applicable, the WORM requirement or Rule 18a–6(e)'s electronic storage system requirements. The Commission expects that these reductions would primarily be realized by broker-dealers that may, for example, choose to adopt a single recordkeeping system that complies with the audit-trail requirement—for business *and* regulatory purposes. Below, the Commission estimates the reduction in initial and ongoing costs and burdens related to these amendments.[300]

These aggregate cost savings may be reduced by three factors. First, some affected entities may have already streamlined their regulatory electronic recordkeeping systems with systems used for business records consistent with the Commission interpretations described above. Second, some affected entities may elect to upgrade existing business recordkeeping systems to accommodate the audit-trail alternative. The affected entities that choose to undertake such upgrades may do so if aggregate savings from eliminating redundant electronic recordkeeping systems outweigh the costs of buildout for existing systems. The Commission expects that these costs would primarily be realized by broker-dealers. However, potential buildout costs may decrease the cost savings from the amendments. Third, because the amendments would not require broker-dealers to make changes to recordkeeping systems that are currently compliant with the WORM requirement, they may choose not to make any changes to recordkeeping systems. Such broker-dealers may, for example, choose to continue maintaining separate recordkeeping systems for business purposes and for regulatory purposes.

The amendments may also benefit customers and counterparties of broker-dealers and nonbank SBS Entities. Specifically, to the extent that broker-dealers and nonbank SBS Entities currently pass on part or all of their recordkeeping costs to their customers and counterparties, some of the above cost savings may flow through to customers and counterparties of broker-dealers and nonbank SBS Entities in the form of lower costs or greater availability of services. The extent to which cost savings are passed along to customers and counterparties will depend on several factors, including the price elasticity of the demand for broker-dealer and nonbank SBS Entity services, the substitutability of broker-dealers and nonbank SBS Entities, concentration in the broker-dealer and nonbank SBS Entity industries due to economies of scale, heterogeneity of broker-dealer and nonbank SBS Entity services, and market segmentation, among others.

The amendments may also enhance Commission oversight of broker-dealers and nonbank SBS Entities. To the degree that the amendments may lead broker-dealers and nonbank SBS Entities to move to a single recordkeeping system for both business and regulatory purposes, and if affected entities direct compliance cost savings to investments in system improvements and maintenance, the reliability and efficiency of recordkeeping systems may increase. Moreover, the Commission believes that the audit-trail and WORM alternatives will provide flexibility for broker-dealers and nonbank SBS Entities, while still maintaining the essential ability of the Commission to access the entities' records in the course of examinations or other activities.

The Commission believes that some of the amendments may provide compliance efficiencies. For example, the amendments related to the verification of completeness and accuracy of the processes for retaining records electronically may introduce time efficiencies in achieving compliance when an original record is added to the electronic recordkeeping system. Further, the Commission believes that the elimination of the notification and representation requirements from Rule 17a–4(f) would alleviate some burden currently imposed on broker-dealers, as discussed below.[301]

The proposing release would have eliminated the *third-party* access and undertakings requirements and would have replaced them with a senior officer undertakings requirement. In the proposing release, the Commission indicated that the removal of the third party undertaking was expected to benefit affected entities by reducing cybersecurity and trade-secret risks attendant to requiring a third party to fulfill these responsibilities.[302] The Commission also expected that senior

[298] *See, e.g.,* NCC Group Letter, LPL Financial Letter, American Fund Distributors Letter.

[299] With respect to SBS Entities, the final amendments would limit the electronic recordkeeping requirements to SBS Entities that do not have a prudential regulator in order to avoid subjecting bank SBS Entities to potentially differing requirements with respect to electronic record preservation. As discussed above, 17 of 19 SBS Entities subject to Rule 18a–6 have a prudential regulator (*i.e.,* are bank SBS Entities). The exclusion of bank SBS Entities from the scope of the electronic recordkeeping system requirements would reduce aggregate benefits and costs related to modifying electronic recordkeeping systems to conform to the amendment to paragraph (e)(2) of Rule 18a–6.

[300] *See* section V.D. of this release (discussing increases and decreases in costs and burdens relating to the amendments for purposes of the Paperwork Reduction Act).

[301] *See* section V.D. of this release (discussing increases and decreases in costs and burdens relating to amendments for purposes of the Paperwork Reduction Act).

[302] *See* Proposing Release, 86 FR at 68317.

officer undertakings could enhance the efficiency of Commission examinations and oversight.

However, some commenters stated that the third party undertakings requirement facilitates regulatory access to records and creates incentives for full cooperation from broker-dealers by providing an alternative and independent means to access records.[303] Another commenter indicated that the third party undertakings requirement benefits affected entities by resulting in meetings between compliance and IT teams that improve broker-dealer understanding of how electronic records are retained, accessed, and disposed of, among others.[304] The Commission has also received comment recommending that the Commission preserve a third party undertaking as an option for affected entities in the event a third party is maintaining records on behalf of the firm.[305] Moreover, other commenters pointed to benefits of allowing more than one senior officer to complete the undertakings [306] and of allowing designation or delegation of responsibility.[307] Specifically, commenters pointed to the need to provide flexibility around personnel relocations, vacation scheduling, succession planning, and technical expertise residing in personnel other than senior officers.[308]

As discussed in Section II.E.6, the final amendments would allow affected entities to produce third party undertakings as an alternative to the senior officer undertakings, and would allow the designated executive officer to appoint in writing up to two employees and three specialists to assist in fulfilling the officer's obligations. This aspect of the final amendments may provide beneficial flexibility to affected entities in organizing their compliance, and may facilitate reliable and efficient Commission access to relevant records, particularly for affected entities that are members of large and complex financial groups.[309]

Moreover, as described in Section II.G, the final amendments would allow affected broker-dealers and security-based swap dealers to have certain third parties execute an Alternative Undertaking in lieu of the Traditional Undertaking, under certain conditions. The Commission believes that this aspect of the final amendments may better account for how cloud service providers maintain records for broker-dealers and SBS Entities. Thus, this aspect of the final amendments may enable broker-dealers and SBS Entities to continue to rely on cloud service provider services in the regular course of business and regulatory recordkeeping. Moreover, the Commission believes that this aspect of the final amendments may promote access of electronic records by the Commission and other securities regulators, as well as trustees appointed under SIPA, for broker-dealers and SBS Entities that maintain records with cloud service providers. Overall, the Commission expects that the final amendments may enhance Commission oversight and examinations of broker-dealers and SBS Entities.

Other final amendments may also incrementally improve regulatory oversight or reduce cybersecurity risk. For example, amendments related to the ability to download and transfer records in human readable and reasonably usable electronic formats may facilitate more efficient Commission oversight as they would reduce the time costs of staff review of individual records as well as searching and sorting electronic records. In addition, the elimination of the escrow account option may reduce cybersecurity risk attendant to having this information held by a third party in escrow.[310]

C. Costs of the Amendments

The amendments are intended to modernize the Commission's recordkeeping requirements and to reduce recordkeeping duplication by affected entities. However, the amendments may result in both direct costs arising out of the final rule (*e.g.,* compliance costs for non-bank SBS Entities altering their electronic systems to comply with either the audit-trail or the WORM requirement), as well as indirect costs that registrants may choose to bear in order to achieve greater compliance efficiencies (*e.g.,* broker-dealers may need to build new or alter existing WORM-compliant electronic recordkeeping systems to the extent they would like to meet the audit-trail alternative). Thus, under the final amendments, broker dealers would have to choose whether to continue using their baseline WORM-compliant systems or to upgrade their systems to comply with the audit trail alternative. Importantly, broker dealers may be incentivized to upgrade their WORM-compliant systems if they face high baseline costs of compliance duplication and expect to achieve greater compliance efficiencies from switching to the audit-trail alternative. Thus, some of the costs discussed above may be mitigated by the savings from the elimination of duplicative recordkeeping and greater compliance efficiencies for broker-dealers that choose to upgrade their systems to comply with the audit-trail alternative.

Section IV estimates the initial and ongoing compliance costs arising out of the final amendments. [311] As estimated in Section IV, the initial cost to build and implement a WORM-compliant electronic recordkeeping system for a large broker-dealer is $10 million, with an additional cost of $1.2 million annually to maintain the system,[312] and the Commission believes that the SBS Entities that would be affected by the amendments are of large sizes comparable to the universe of broker-dealers that the rulemaking petitioners used to derive those estimates. In addition, as discussed in Section IV, the Commission believes that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirements and the ongoing cost to maintain the system would be substantially lower than the analogous costs that would be incurred with

[303] *See* NCC Group Letter.

[304] *See* 17a–4, LLC Letter.

[305] *See* RegEd Letter.

[306] *See* Fidelity Letter; NRS Letter; RegEd Letter; SIFMA Letter.

[307] *See* American Funds Distributors Letter; ICE Bonds Letter; SIFMA Letter.

[308] *See* American Funds Distributors Letter; SIFMA Letter.

[309] As discussed in Part II.G., under existing Rules 17a–4 introductory text and (i) and 18a–6(f), a contract with a third-party record provider may not permit the provider to withhold, delete, discard, or prevent remote access to an affected entity's records in the event of a payment dispute or other contractual dispute. Since these requirements are already part of the regulatory baseline for third-party record providers subject to the new provisions for alternative undertakings (such as cloud service providers), the rule change is not expected to add new burdens. In addition, to the degree that nonpayment or other contractual disputes between third-party record providers and their clients can hinder Commission access to records, the designated executive undertaking provision may further enhance Commission access to records of affected entities.

[310] The Commission does not expect significant benefits or costs associated with certain other amendments that the Commission believes are technical in nature. These amendments include simplification of the introductory text of paragraph (f)(3) of Rule 17a–4 and paragraph (e)(3) of Rule 18a–6; amendments to paragraph (f)(3)(i) of Rule 17a–4 and paragraph (e)(3)(i) of Rule 18a–6 to replace terms tied to micrographic media and optical disk technology; amendments to better clarify paragraph (f)(3)(ii) of Rule 17a–4 and paragraph (e)(3)(ii) of Rule 18a–6; and amendments moving the requirements for broker-dealers using micrographic media to new paragraph (f)(4) of Rule 17a–4.

[311] *See* section V.D. of this release (discussing decreases and increases in costs and burdens relating to the amendments for purposes of the Paperwork Reduction Act).

[312] *See* Rule 17a–4(f) Rulemaking Petition Addendum at 4–5.

respect to a WORM-compliant system.[313] In particular, the Commission estimates that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirement for a large broker-dealer or SBS Entity without a prudential regulator and that is not a broker-dealer is $1,000,000, with an additional cost of $120,000 annually to maintain the system.

There are 854 broker-dealers with assets of $10 million or more and two SBSDs that would be subject to paragraph (e)(2) of Rule 18a–6. The Commission anticipates that eliminating the application of the technical requirements for electronic recordkeeping systems set forth in paragraph (e)(2) of Rule 18a–6 to the 17 SBSDs that have a prudential regulator and are subject to Rule 18a–6 would result in a decrease of 100 hours per firm on an annual basis, or 1,700 hours per year for all firms affected by the amendment, for an ongoing cost savings of $537,000 per year for all affected firms.[314] Further, the elimination of the DEA notification requirement may decrease ongoing costs by $136,828 per year for the industry.

As discussed in Section IV.D, the Commission does not believe any broker-dealers or SBSDs will elect to build a WORM-compliant electronic recordkeeping system. Moreover, the Commission estimates that most of these firms have electronic recordkeeping systems that could meet the audit-trail requirement or that could be configured to meet that requirement without the need to build a new system. The Commission estimates that 20 of these firms would elect to modernize their recordkeeping by building a new electronic recordkeeping system to meet the audit-trail requirement for an initial one-time industry cost burden of $20,000,000 and an annual cost burden of $2,400,000.

The Commission estimates that the cost for the 2,654 broker-dealers with less than $10,000,000 in total assets to build and maintain an electronic recordkeeping system that meets the final audit-trail requirement would be significantly less than the $1,000,000 initial and $120,000 annual costs estimated for the 854 larger broker-dealers and two SBSDs that would be subject to paragraph (e)(2) of Rule 18a–6. Consequently, the Commission estimates that the initial cost to build and implement an electronic recordkeeping system that meets the audit-trail requirement for these smaller broker-dealers is $100,000, with an additional cost of $12,000 annually to maintain the system. The Commission estimates that most of the 2,654 broker-dealers with $10,000,000 or less in total assets will continue to preserve records in the manner they do today: using a WORM-compliant system, using micrographic media, or maintaining paper records. As estimated in Section IV, 80 of these firms would elect to build a new electronic recordkeeping system to meet the audit-trail requirement for an initial one-time industry cost burden of $8,000,000 and an annual cost burden of $960,000.

The Commission believes that broker-dealers and SBS Entities would incur an initial burden and ongoing annual burden in establishing a backup electronic recordkeeping system or other redundancy capabilities. The Commission believes these burdens and costs would be substantially less than the burdens and costs of the primary electronic recordkeeping systems because of the benefit of economies of scale for the backup system whereby common technology and personnel could be used for both systems. The Commission estimates that the costs and burdens for the 854 larger broker-dealers subject to paragraph (f)(2) of Rule 17a–4 and the two SBSDs that would be subject to paragraph (e)(2) of Rule 18a–6 would be $250,000 in initial burdens and costs and $30,000 in annual burdens and costs. Further, the Commission expects that the broker-dealers and SBS Entities that have electronic recordkeeping systems that could meet the audit-trail requirement or that could be configured to meet that requirement without the need to build a new system also maintain backup recordkeeping systems or other redundancy capabilities. Therefore, the initial and annual costs would be incurred by the 20 firms that elect to build a new electronic recordkeeping system that meets the final audit-trail requirements. Consequently, the Commission estimates that the industry-wide costs and burdens for these firms would be $5,000,000 in initial costs and burdens and $600,000 in annual costs and burdens.

The Commission estimates that the costs and burdens incurred by the 80 smaller broker-dealers that would build electronic recordkeeping systems to meet the audit-trail requirement and, therefore, need to build a backup recordkeeping system or other redundancy capabilities, would be substantially less than the costs and burdens incurred by the larger broker-dealers due to the smaller size and complexity of recordkeeping systems of smaller broker-dealers. As discussed in Section IV.D, the Commission estimates that these firms would incur an initial costs and burdens of $25,000 and ongoing annual costs and burdens of $3,000. Therefore, the Commission estimates that the industry-wide costs and burdens for these firms would be $2,000,000 in initial costs and burdens and $240,000 in ongoing annual costs and burdens.

In addition, Rule 18a–6(e) does not contain a third-party undertakings requirement; however, the amendments to the rule add a requirement that either a Designated Third Party or a Designated Executive Officer complete the access and undertakings requirements in a manner analogous to the requirements of Rule 17a–4(f), as amended. As discussed in Section IV, this change, and, in the case of SBSDs, the addition of a senior officer or third-party undertakings requirement, will result in a one-time initial cost of $1,656,501 under Rule 17a–4(f) and of $9,443 for SBSDs under Rule 18a–6(e).

The Commission recognizes that the amendments would not harmonize with the parallel recordkeeping rule for CFTC registrants (*e.g.,* futures commission merchants and swap dealers). In contrast, the amendments impose a bright line audit-trail or WORM requirement. The Commission has received comment that the audit-trail alternative is not ''technology-neutral'' and may reduce the ability for firms to implement future technological innovations or advancements.[315] However, as discussed in Section II.D, the audit-trail alternative is an option that affected entities may choose to rely on in lieu of the baseline WORM-compliant electronic recordkeeping systems. Importantly, the technical requirements in the final amendments related to the system having the capacity to recreate an original record if it is modified or deleted were designed to prevent records from being altered, over-written, or erased. The Commission believes that a principles-based approach that harmonizes with the CFTC would rely on the broker-dealer or SBS Entity to establish appropriate systems and controls that ensure the authenticity and reliability of regulatory records without specifying that the systems and controls must permit the recreation of an original record if it is modified or deleted. As discussed in Section II.D.2, the Commission continues to believe that

[313] *See, e.g.,* Rule 17a–4(f) Rulemaking Petition at 6–7.

[314] 1,700 hours × $316 per hour (at the compliance manager rate) = $537,000.

[315] *See, e.g.,* Committee of Annuity Insurers Letter, FSI Letter, NRS Letter.

providing the option to preserve records using an electronic recordkeeping system that complies with the audit-trail requirement appropriately addresses concerns about the WORM requirement while meeting the objective of preserving electronic records in a manner that protects the authenticity and reliability of original records. However, the Commission recognizes that a lack of harmonization in the recordkeeping requirements for certain registrants may give rise to compliance inefficiencies for those broker dealers and SBS Entities that are dually registered with the CFTC.

Certain other aspects of the amendments may also impose costs on affected entities. Specifically, the amendments related to human readable and reasonably usable electronic file formats may impose compliance costs related to the required updates to recordkeeping systems.[316] Further, amendments requiring broker-dealers and SBS Entities to have a backup set of records or have other redundancy capabilities when records are preserved on an electronic recordkeeping system may impose additional costs related to making updates to compliance systems, as compared to the current rules' requirements to store separately from originals a duplicate copy of a record.[317] The designated executive officer undertakings requirements may impose additional time demands on senior officers, though these costs may be at least partially offset for broker-dealers by savings attendant to removing the requirement for third-party access. To the extent that these requirements increase the scope of senior officer duties and increase potential liability on the part of senior officers, senior officers may demand higher compensation and liability insurance, which may result in an increase to senior officer recruitment and retention costs. Two important factors may reduce these costs. First, the final amendments would provide valuable flexibility in carrying out the designated executive officer undertakings, as discussed in Section II above. Second, affected entities, for which the above costs of the designated executive officer undertakings are highest, may continue to rely on third party undertakings that are already required under the baseline.

Moreover, as discussed in Section II, the final amendments would allow affected broker-dealers and SBS Entities to have certain third parties execute an Alternative Undertaking in lieu of the Traditional Undertaking, under certain conditions. As discussed in Section IV, 500 of the broker-dealers and 10 of the SBSDs that currently employ cloud service providers for electronic recordkeeping purposes will be required to obtain the Alternative Undertaking from the third-party cloud service provider (*i.e.,* an undertaking tailored to how cloud service providers hold electronic records for broker-dealers and SBSDs) discussed above. This requirement would impose costs on broker-dealers and cloud service providers: as estimated in Section IV, five different cloud service providers will need to execute these 510 Alternative Undertakings and 510 broker-dealers will need to obtain the undertakings from the cloud service providers. The need for cloud service providers to review and execute the Alternative Undertaking is expected to result in an initial cost of $253,470 for cloud service providers and $253,470 for broker-dealers.[318]

The Commission recognizes that cloud service providers may pass along some or all of these costs, directly or indirectly, to broker-dealers and SBS Entities that utilize cloud service providers, which may increase costs of electronic recordkeeping. The Commission cannot quantify the extent to which individual broker-dealers and SBS Entities may experience such cost increases as that will depend on a number of factors, including, among others, the willingness of cloud service providers to pass on costs to other customers, competition by cloud service providers for covered entity clients, new entry in the market for cloud services (potentially reducing the cost per provider), broker-dealer and SBS Entity size (potentially affecting their bargaining power), information-sharing in the industry on standard-form agreements, and the profitability of cloud services. In addition, some affected entities that may experience increases in costs of third party services may choose to reduce their reliance on third party service providers.

However, as discussed above, the conditions for the Alternative Undertaking are intended to enhance access to broker-dealer and SBS Entity records. The Commission continues to believe that Commission access to the records of a broker-dealer or an SBS Entity for examinations is essential for the protection of customers and investors.

D. Reasonable Alternatives

The Commission has considered a number of alternatives. First, the Commission has considered harmonizing the recordkeeping rules for SBS Entities with the CFTC's principles-based approach applicable to Swap Dealers, but retaining the final audit-trail requirement for broker-dealers.

This alternative could help harmonize the treatment of cross-registered Swap and SBS Entities, facilitating transactions across integrated markets, while retaining the requirement that broker-dealers are able to produce originals of deleted or altered records. However, because prudentially regulated SBS Entities would not be subject to the technical requirements governing electronic recordkeeping systems, to benefit from this alternative, the SBS Entity would have to be registered as a swap dealer and not be registered as a broker-dealer or have a prudential regulator. Currently, only two SBSDs fit within this category, and they are subject to the CFTC's electronic recordkeeping requirements through application of the alternative compliance mechanism. Moreover, this alternative would create a wedge between single-name CDS markets intermediated by SBS Entities and markets for reference entity securities intermediated by broker-dealers. Importantly, costs of the final amendments are likely to be low relative to the costs of maintaining duplicate systems under the baseline. Thus, the relative magnitude of such economic effects may be limited.

Second, the Commission considered harmonizing recordkeeping rules for both broker-dealers and SBS Entities with the CFTC's principles-based approach.[319] This alternative could help harmonize the treatment of Swap Dealers and SBS Entities that are also broker-dealers. However, as discussed in Section II.D.2, this alternative would require the broker-dealer or SBS Entity to establish systems and controls that ensure the authenticity and reliability of regulatory records without specifying

[316] *See* section V.D. of this release (discussing increases and decreases in costs and burdens relating to the amendments for purposes of the PRA).

[317] The Commission does not expect significant costs associated with certain other final amendments, including amendments to eliminate the notification and representation requirements from Rule 17a–4(f); amendments to eliminate the escrow account option from paragraph (f)(3)(vi) of Rule 17a–4 and paragraph (e)(3)(vi) of Rule 18a–6; and amendments to the requirements of paragraph (f)(2)(ii)(B) of Rule 17a–4 and paragraph (e)(2)(i) of Rule 18a–6 to provide additional specificity regarding the requirement that original records are completely and accurately captured.

[318] One-time initial cost for five cloud service providers: (102 hours × five cloud service providers) × $497 per hour (at the controller hourly rate) = $253,470. And one-time initial cost for broker-dealers and SBSDs: 510 hours × $497 per hour (at the controller hourly rate) = $253,470.

[319] *See, e.g.,* Proposing Release, 86 FR at 68302.

that the systems and controls must permit the recreation of an original record if it is modified or deleted. The Commission continues to believe that the audit-trail requirement provides the flexibility of a principles-based requirement by setting forth a high-level yet specific outcome the electronic recordkeeping system must achieve—the ability to recreate an altered or deleted record—without prescribing how the system must be configured to meet that objective.

Third, the Commission could require prudentially regulated SBS Entities to meet the electronic recordkeeping system requirements. This alternative would expand the scope of application of the requirements, magnifying its benefits for Commission oversight as well as costs of altering existing recordkeeping systems. As a baseline matter, the Commission recognizes that prudentially regulated SBS Entities are subject to a robust system of recordkeeping requirements for different types of activities, including recordkeeping requirements under the Bank Secrecy Act regarding funds transfers equal to or greater than $3,000; [320] recordkeeping requirements regarding fiduciary accounts; [321] recordkeeping requirements for securities transactions; [322] and recordkeeping requirements for small business and farm loans, including a requirement to maintain the information in machine readable form.[323] Importantly, as discussed above, the Commission believes that the final rule's requirements may conflict or overlap with the recordkeeping systems banks have implemented under regulations or guidance of the prudential regulators. The Commission believes that requiring prudentially regulated SBS Entities to meet the final electronic recordkeeping system requirements (in addition to the recordkeeping requirements these entities are already subject to) would not create significant incremental benefits.

Fourth, the Commission could have eliminated the WORM alternative and required all broker-dealers and nonbank SBS Entities to comply with an audit-trail requirement. This alternative would require all affected entities to modernize their recordkeeping systems to meet the audit-trail requirement. While this alternative could produce long-term compliance efficiencies for a greater number of affected participants, it would also require all affected entities with WORM compliant systems to upgrade their electronic recordkeeping systems. Since compliance costs may be particularly burdensome for smaller entities, the alternative could have a disproportionate effect on smaller and medium-sized broker-dealers.

As another alternative, the Commission could have required that a second Designated Executive Officer have independent access to and the ability to provide the records and to execute the undertakings at all times. To the degree that relying on a single Designated Executive Officer may present risks that the senior officer is unable or unwilling to obtain records, this alternative could increase the probability that the Commission would be able to access records. Thus, relative to the final amendments, the alternative may further enhance the efficiency of Commission examinations and oversight. However, the final amendments would allow a Designated Executive Officer to appoint other officers and specialists to fulfil their obligations, under the conditions described above, ensuring that the Commission has access to relevant records for purposes of examinations and oversight. At the same time, this alternative may impose additional time demands on a second Designated Executive Officer in each affected entity. To the extent that the alternative would increase the scope of duties and increase potential liability on the part of a greater number of executive officers of affected entities, more executive officers may demand higher compensation and liability insurance, which may result in a greater increase to executive officer recruitment and retention costs relative to the final amendments.

The final amendments could have harmonized the compliance date for all affected broker-dealers and SBS Entities.[324] As a related alternative, the Commission could have set the compliance date for the amendments to Rules 17a–4 and 18a–6 at 18 months after publication of the amendments in the **Federal Register**. Relative to the approach being adopted, these alternatives would have given affected broker-dealers and SBS Entities more time to comply with amended rules, including developing audit trail compliant recordkeeping systems. Since broker-dealers are already required to have WORM-compliant recordkeeping systems and because, under the final rule, the audit trail is an alternative to such systems, this benefit may be greater for SBS Entities, which are not currently subject to WORM requirements. Thus, under the final rule, broker-dealers would be able to continue to use their existing WORM-compliant recordkeeping systems for regulatory compliance and may transition to audit-trail compliant systems over time. As discussed above, the Commission believes that SBS Entities may generally elect to configure existing electronic recordkeeping systems, rather than develop new systems, in order to come into compliance with the final rules. Based on staff experience and given the relative size and sophistication of SBS Entities, the Commission believes that twelve months after publication in the **Federal Register** will be sufficient time for SBS Entities to come into compliance with these new requirements. Moreover, while the Commission acknowledges commenters' request for an 18-month compliance period, it does not believe that the timing concerns raised require more than a twelve month compliance period. In addition, the Commission believes that the twelve-month compliance period may help enhance Commission oversight and examinations, while the audit-trail and WORM alternatives may provide flexibility for broker-dealers and nonbank SBS Entities.

E. Effects on Efficiency, Competition, and Capital Formation

The primary effect of the amendments on efficiency would stem from increased efficiency of broker-dealer and SBS Entity recordkeeping. Permitting either the audit-trail or WORM (introduced in the optical disk era) alternative is intended to allow broker-dealers and SBS Entities to modernize the records and systems such entities maintain for regulatory purposes. The Commission anticipates that most of the affected entities would respond to such a requirement by eliminating duplicative recordkeeping for regulatory and business purposes, giving rise to cost efficiencies discussed above. The amendments would not alter the amount, type, or manner of disclosures available to investors or the Commission, nor would it change broker-dealer or SBS Entity business models or activities. Thus, the Commission does not anticipate the amendments to impact informational or allocative efficiency.

The amendments are not expected to significantly impact competition between bank and nonbank SBS Entities. As described above, the amendments would impose electronic recordkeeping system requirements (including the audit-trail alternative) on

[320] *See, e.g.,* 31 CFR 1020.410.

[321] *See* 12 CFR 9.8.

[322] *See* 12 CFR 12.3.

[323] *See* 12 CFR 25.42.

[324] *See* SIFMA Letter.

nonbank SBS Entities, but not on bank SBS Entities. Transitioning regulatory recordkeeping systems from hardware solutions (such as optical disks) meeting the WORM requirement to electronic records compliant with the audit-trail requirement may require costly modifications to existing recordkeeping systems of broker-dealers and nonbank SBS Entities may need to modify existing electronic recordkeeping systems to meet either the WORM or audit-trail requirement; bank SBS Entities would not bear such costs.

To the extent that the amendments result in cost savings for broker-dealers and SBS Entities estimated above, affected entities may be able to allocate newly available capital into capital forming activities. However, it is not clear that affected entities would direct cost savings to expanding their financial intermediation business and given the magnitude of the cost savings estimated above, the capital formation effects of the amendments are likely limited. Therefore, the amendments are also not expected to have significant effects on capital formation.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that Federal agencies, in promulgating rules, consider the impact of those rules on small entities.[325] Section 3(a) of the RFA [326] generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on small entities unless the Commission certifies that the rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.[327] In the proposing release, the Commission performed an initial regulatory flexibility analysis and sought comment on the analysis.[328] The Commission did not receive any comments on the analysis.

A. Reasons for, and Objectives of, the Final Action

The final amendments to Rules 17a–4 and 18a–6 are designed to modernize the electronic recordkeeping requirements for broker-dealers and SBS Entities, and to align the requirements in those rules more closely to the current electronic recordkeeping practices of broker-dealers and SBS Entities.

Rule 17a–4 currently requires a broker-dealer to notify its DEA before employing an electronic recordkeeping system.[329] The amendments to the rule eliminate this requirement as outdated.[330] In particular, this requirement is no longer necessary because the rule was adopted at a time when the use of electronic recordkeeping systems by broker-dealers to meet the record maintenance and preservation requirements of Rule 17a–4 was a relatively new phenomenon, and the staff of DEAs, including FINRA, now have substantial experience and familiarity with the topic.

Rule 17a–4 currently requires a broker-dealer to maintain and preserve electronic records exclusively in a WORM format. The amendments to Rule 17a–4 add an audit-trail alternative to the WORM requirement.[331] Under the audit-trail alternative, a broker-dealer will need to use an electronic recordkeeping system that maintains and preserves electronic records in a manner that permits the recreation of an original record if it is modified or deleted. Currently, Rule 18a–6 does not require an SBS Entity to use an electronic recordkeeping system that meets either the audit-trail or the WORM requirement. The amendments to Rule 18a–6 require a nonbank SBS Entity to maintain and preserve electronic records using an electronic recordkeeping system that meets either the audit-trail or the WORM requirement.[332] Thus, under the amendments to Rules 17a–4 and 18a–6, a broker-dealer and a nonbank SBS Entity will need to use an electronic recordkeeping system that meets either the audit-trail requirement or the WORM requirement. The Commission believes that the amendments—by adding the audit-trail alternative—will save many broker-dealers and nonbank SBS Entities from the burden of maintaining and preserving records on an electronic recordkeeping system that serves no function other than to comply with the WORM requirement. The audit-trail alternative will permit them to leverage the electronic recordkeeping systems they use for business purposes to meet the record maintenance and preservation requirements of Rules 17a–4 and 18a–6.

Rule 17a–4 currently requires a broker-dealer to engage a third party who has access to and the ability to download information from the broker-dealer's electronic storage media to any acceptable medium under the rule. The Designated Third Party must execute written undertakings agreeing to, among other things, furnish promptly to the Commission and other securities regulators the information necessary to download information kept on the electronic storage media to any medium acceptable under Rule 17a–4. The amendments to Rule 17a–4 modify the form of the undertakings to make them more technology neutral and to provide an alternative to engaging a Designated Third Party to perform this function.[333] Under the alternative, the broker-dealer can have a Designated Executive Officer execute the undertakings if the Designated Executive Officer has access to and the ability to provide records maintained and preserved on the broker-dealer's electronic recordkeeping system either directly or through a specialist who reports directly or indirectly to the executive officer. Further, the Designated Executive Officer can appoint in writing up to two employees who are direct or indirect reports to fulfill the executive officer's obligations if the executive officer is unavailable. The employees must have the same ability as the executive officer to access and provide the records either directly or through a specialist who reports directly or indirectly to them. In addition, the Designated Executive Officer can appoint in writing up to three specialists to assist in fulfilling the executive officer's obligations. Rule 18a–6 currently does not have either a third-party or executive officer undertakings requirement. The amendments to Rule 18a–6 add the third-party undertakings requirement and alternative executive officer undertakings requirement to the rule.[334] Thus, under the amendments to Rules 17a–4 and 18a–6, a broker-dealer and an SBS Entity must have either a third party or an executive officer provide the written undertakings.

These amendments are designed to promote the ability of the Commission and other securities regulators in accessing broker-dealer or SBS Entity records stored electronically. Further, by retaining the Designated Third Party alternative, broker-dealers will be able to use their existing Designated Third Parties if they choose not use the Designated Executive Officer option. In addition, by adding the Designated Executive Officer option, broker-dealers and SBS Entities will be able to avoid

[325] 5 U.S.C. 601 *et seq.*

[326] 5 U.S.C. 603.

[327] 5 U.S.C. 605(b).

[328] *See* Proposing Release, 86 FR at 68324–25.

[329] Rule 18a–6 does not have a similar requirement.

[330] *See* section II.C. of this release (discussing these amendments in more detail).

[331] *See* section II.D.2. of this release (discussing these amendments in more detail).

[332] *Id.*

[333] *See* section II.E.6. of this release (discussing these amendments in more detail).

[334] *Id.*

the costs of using a Designated Third Party. This option also will address data leakage and cybersecurity concerns with giving a Designated Third Party access to information necessary to view and download records stored electronically.

Rules 17a–4 and 18a–6 require a third party who prepares or maintains the regulatory records of a broker-dealer or SBS Entity (regardless of whether the records are in paper or electronic form) to file a written undertaking with the Commission signed by a duly authorized person.[335] The undertaking must include a provision whereby the third-party agrees, among other things, to permit examination of the records by representatives or designees of the Commission as well as to promptly furnish to the Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records. Some broker-dealers and SBS Entities maintain their electronic recordkeeping systems and associated electronic records on servers or other storage devices that are owned or operated by a third party (*e.g.,* a cloud service provider). The broker-dealer or SBS Entity controls the electronic recordkeeping system and the access to the electronic records preserved on the system. Consequently, the third parties state that they cannot provide the undertaking required under Rules 17a–4 and 18a–6.

The Commission is amending the Rules 17a–4 and 18a–6 to address this development in electronic recordkeeping practices.[336] Under the amendments, the third party may provide an alternative undertaking that is tailored to how cloud service providers hold electronic records for broker-dealers and SBS Entities. The use of this alternative undertaking is subject to certain conditions, including that the records are maintained on an electronic recordkeeping system and the broker-dealer or SBS Entity has independent access to the records, meaning, among other things, the broker-dealer can access the records without the need of any intervention of the third party. Consequently, the alternative undertaking cannot be used if the records maintained and preserved by the third party are not maintained and preserved by means of an electronic recordkeeping system (*e.g.,* it cannot be used if the records are in paper form). It also cannot be used if the broker-dealer or SBS Entity must rely on the third party to take an intervening step to make the records available to the broker-dealer or SBS Entity (*e.g.,* it cannot be used if the broker-dealer or SBS Entity must ask the third party to transfer copies of the records to the broker-dealer or SBS Entity or must ask the third party to first decrypt the records before they can be accessed). The final amendments are designed to accommodate the use of cloud service providers by broker-dealers and SBS Entities in manner that promotes the accessibility of the records.

In the alternative undertaking, the third party must, among other things, acknowledge that the records are the property of the broker-dealer or SBS Entity and that the broker-dealer or SBS Entity has represented to the third party that the broker-dealer or SBS Entity: (1) is subject to rules of the Commission governing the maintenance and preservation of certain records; (2) has independent access to the records maintained by the third party; and (3) consents to the third party fulfilling the obligations set forth in the undertaking. Further, the third party must undertake to facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Commission as permitted under the law. In the case of a broker-dealer, the third party must also undertake to facilitate within its ability, and not impede or prevent, a trustee appointed under SIPA to liquidate the broker-dealer in accessing, downloading, or transferring the records as permitted under the law.

Rules 17a–4 and 18a–6 require a broker-dealer or SBS Entity, respectively, to furnish promptly to a representative of the Commission legible, true, complete, and current copies of records required to be preserved under the rules and any other records subject to examination. The amendments to Rules 17a–4 and 18a–6 require the broker-dealer or SBS Entity to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system in a reasonably usable electronic format, if requested by a representative of the Commission.[337] This means the record will need to be produced in an electronic format that is compatible with commonly used systems for accessing and reading electronic records. The requirement to produce records in a reasonably usable electronic format will facilitate examinations and other regulatory reviews by making them more efficient.

Finally, the amendments to both rules remove or replace text to make them more technology neutral and to improve readability.

B. Legal Basis

Pursuant to Exchange Act Sections 15F(f) (15 U.S.C. 78o–10(f)) and 17(a) (15 U.S.C. 78q(a)), the Commission revises §§ 240.17a–4(f), (i), and (j) and 240.18a–6(e), (f), and (g) of title 17 of the Code of Federal Regulations.

C. Small Entities Subject to the Final Rules

As discussed above, the Commission estimates that approximately 3,508 broker-dealers and 19 SBS Entities will be subject to the new requirements as a result of the amendments to Rules 17a–4(f), (i), and (j) and 18a–6(e), (f), and (g), respectively. For purposes of this regulatory flexibility analysis, the Commission refers to broker-dealers that might be deemed small entities under the RFA as ''small entities.''

Based on FOCUS Report data, the Commission estimates that as of December 31, 2021, approximately 744 of those broker-dealers might be deemed small entities for purposes of this analysis. Based upon the Commission's prior RFA certification that adoption of Rule 18a–6 would not have a significant economic impact on a substantial number of small entities for the purposes of the RFA,[338] the Commission believes that no small entities will be affected by the final amendments to Rule 18a–6.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The RFA requires a description of the projected reporting, recordkeeping, and other compliance requirements of the amendments to Rules 17a–4(f), (i), and (j) and 18a–6(e), (f), and (g), including an estimate of the classes of small entities that would be subject to the requirements and the type of professional skill necessary to prepare required reports and records. Following is a discussion of the associated costs and burdens of compliance with the

[335] This undertaking requirement is designed to address access to broker-dealer or SBS Entity records when they are held by a person other than the broker-dealer or SBS Entity and regardless of whether the records are in paper form, stored on micrographic media, or stored on an electronic recordkeeping system. It is separate from the third-party or executive officer undertakings requirements discussed above, which are designed to address access to records preserved and maintained on an electronic recordkeeping system irrespective of whether they are held by a third party.

[336] *See* section II.G. of this release (discussing these amendments in more detail).

[337] *See* section II.H. of this release (discussing these amendments in more detail).

[338] *See* SBSD/MSBSP Recordkeeping Adopting Release, 84 FR at 68645.

final amendments, as incurred by small entities.[339]

The Commission does not believe that the compliance costs of the final amendments will be significant. The audit-trail alternative to should be consistent with existing broker-dealer practices. Broker-dealers have explained to the Commission that the electronic recordkeeping systems used for business purposes are dynamic and updated constantly (*e.g.,* with each new transaction or position) and easily accessible for retrieving records. The Commission believes that these contemporary electronic recordkeeping business systems, in many cases, can be configured to meet the audit-trail requirement in Rule 17a–4(f), as amended. Moreover, small broker-dealers could continue to preserve records on electronic recordkeeping systems that meet the WORM requirement.

The addition of the Designated Executive Officer requirement as an alternative to the Designated Third Party requirement should reduce the burden on small broker-dealers because they will be able to use an internal resource at no marginal cost rather than an external source to comply with the requirement. Moreover, retention of the Designated Third Party requirement as an alternative to the Designated Executive Officer requirement will permit small broker-dealers to continue with their existing arrangements.

The amendments requiring a broker-dealer to furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant Rule 17a–4(f) in a reasonably usable electronic format, if requested by a representative of the Commission, should not impose a burden on small entities. Most existing electronic recordkeeping systems should have this capacity.

Finally, the amendments providing for the use of the Alternative Undertaking will accommodate the use of cloud service providers by small broker-dealers. This should provide them with more options for maintaining and preserving records in an electronic format by facilitating the use of cloud service providers for this purpose.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission does not believe that the final amendments impacting small entities that are broker-dealers would duplicate, overlap, or conflict with other Federal Rules.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish its stated objective, while minimizing any significant economic impact on small entities. The Commission considered the following alternatives for small entities: (1) exempting broker-dealers that are small entities from the proposed requirements, to account for resources available to small entities; (2) establishing different requirements, including frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using performance rather than design standards.

The Commission considered exempting broker-dealers that are small entities from the new requirements and establishing different requirements for these firms.[340] However, the Commission elected not to do so for a number of reasons, including: (1) the option for small entities to keep their records in paper or micrographic media, rather than electronically; (2) the importance of establishing requirements for reliable and secure electronic recordkeeping systems for broker-dealers; (3) the availability of multiple third-party vendors to provide the electronic recordkeeping services; and (4) the ability of small entities to continue to use existing WORM-compliant electronic recordkeeping systems.

In this vein, the Commission also considered eliminating the WORM alternative and requiring all broker-dealers to comply with an audit-trail requirement. This alternative would require all affected entities to modernize their recordkeeping systems to meet the audit-trail requirement. While this alternative could produce long-term compliance efficiencies for a greater number of affected participants, it would also require all affected entities with WORM-compliant systems to upgrade their electronic recordkeeping systems. The Commission elected not to propose this alternative because the accompanying compliance costs could be particularly burdensome for smaller entities and could have a disproportionate effect on smaller and medium-sized broker-dealers.

The Commission also considered simplifying compliance by proposing performance rather than design standards similar to the approach taken by the CFTC. The CFTC amended the electronic recordkeeping requirements by replacing prescriptive requirements for electronic recordkeeping systems with a principles-based approach.[341] The Commission believes that the final amendments establishing electronic recordkeeping requirements for broker-dealers will provide greater protection to the original records created and preserved by broker-dealers, thereby giving regulators more reliable and secure access to those records.[342] Moreover, the Commission believes that the final amendments address the same concerns accounted for in the CFTC's rule, namely the security and authenticity of and access to records. For these reasons, the Commission determined not adopt principles-based rules.

VII. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[343] the Office of Information and Regulatory Affairs has designated these rules as not a major rule as defined by 5 U.S.C. 804(2).

VIII. Statutory Basis

The Commission is revising Rules 17a–4 and 18a–6 under the Exchange Act (17 CFR 240.17a–4 and 17 CFR 240.18a–6) pursuant to the authority conferred by the Exchange Act, including Sections 15F and 17.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

For the reasons set out in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

[339] *See* section IV.D. of this release (discussing the total initial and annual reporting burdens and related costs for smaller broker-dealer, some of which will be small entities for purposes of the RFA).

[340] As stated above, the Commission does not believe any SBS Entities qualify as ''small entities'' for the purposes of the RFA.

[341] *See* CFTC, *Recordkeeping,* 82 FR at 24480.

[342] *See* Section II.D.2. of this release (discussing why the Commission adopted the audit-trail requirement).

[343] 5 U.S.C. 801 *et seq.*

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17a–4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d–1, 78d–2; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w);

* * * * *

■ 2. Amend § 240.17a–4 by:
■ a. Revising paragraphs (f), (i), and (j).
■ b. Removing the heading from paragraph (k).

The revisions read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(f) Subject to the conditions set forth in this paragraph (f), the records required to be maintained and preserved pursuant to § 240.17a–3 and this section may be immediately produced or reproduced by means of an electronic recordkeeping system or by means of micrographic media and be maintained and preserved for the required time in that form.

(1) For purposes of this paragraph (f):

(i) The term *micrographic media* means microfilm or microfiche, or any similar medium;

(ii) The term *electronic recordkeeping system* means a system that preserves records in a digital format in a manner that permits the records to be viewed and downloaded;

(iii) The term *designated executive officer* means a member of senior management of the member, broker, or dealer who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated executive officer;

(iv) The term *designated officer* means an employee of the member, broker, or dealer who reports directly or indirectly to the designated executive officer and who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated officer;

(v) The term *designated specialist* means an employee of the member, broker, or dealer who has access to, and the ability to provide records maintained and preserved on, the electronic recordkeeping system; and

(vi) The term *designated third party* means a person that is not affiliated with the member, broker, or dealer who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system.

(2) An electronic recordkeeping system must:

(i)(A) Preserve a record for the duration of its applicable retention period in a manner that maintains a complete time-stamped audit trail that includes:

(*1*) All modifications to and deletions of the record or any part thereof;

(*2*) The date and time of actions that create, modify, or delete the record;

(*3*) If applicable, the identity of the individual creating, modifying, or deleting the record; and

(*4*) Any other information needed to maintain an audit trail of the record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record if it is modified or deleted; or

(B) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(ii) Verify automatically the completeness and accuracy of the processes for storing and retaining records electronically;

(iii) If applicable, serialize the original and duplicate units of the storage media, and time-date the required period of retention for the information placed on such electronic storage media;

(iv) Have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in both a human readable format and in a reasonably usable electronic format and to readily download and transfer the information needed to locate the electronic record, as required by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer; and

(v)(A) Include a backup electronic recordkeeping system that meets the other requirements of this paragraph (f) and that retains the records required to be maintained and preserved pursuant to § 240.17a–3 and in accordance with this section in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or

(B) Have other redundancy capabilities that are designed to ensure access to the records required to be maintained and preserved pursuant to § 240.17a–3 and this section.

(3) A member, broker, or dealer using an electronic recordkeeping system must:

(i) At all times have available, for examination by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer, facilities for immediately producing the records preserved by means of the electronic recordkeeping system and for producing copies of those records.

(ii) Be ready at all times to provide, and immediately provide, any record stored by means of the electronic recordkeeping system that the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer may request.

(iii) For a broker-dealer operating pursuant to paragraph (f)(2)(i)(B) of this section, the member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to § 240.17a–3 and this section to the electronic recordkeeping system and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organization of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(iv) Organize, maintain, keep current, and provide promptly upon request by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer all information necessary to access and locate records preserved by

means of the electronic recordkeeping system.

(v)(A) Have at all times filed with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records signed by either a designated executive officer or designated third party (hereinafter, the ''undersigned''):

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, any self- regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer], upon reasonable request, such information as is deemed necessary by the staff of the Commission, any self-regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer], and to download copies of a record and its audit trail (if applicable) preserved by means of an electronic recordkeeping system of [Name of the Member, Broker, or Dealer] into both a human readable format and a reasonably usable electronic format in the event of a failure on the part of [Name of the Member, Broker, or Dealer] to download a requested record or its audit trail (if applicable).

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to the information preserved by means of an electronic recordkeeping system of [Name of the Member, Broker, or Dealer], including, as appropriate, downloading any record required to be maintained and preserved by [Name of the Member, Broker, or Dealer] pursuant to §§ 240.17a–3 and 240.17a–4 in a format acceptable to the staff of the Commission, any self-regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer]. Specifically, the undersigned will take reasonable steps to, in the event of a failure on the part of [Name of the Member, Broker, or Dealer] to download the record into a human readable format or a reasonably usable electronic format and after reasonable notice to [Name of the Member, Broker, or Dealer], download the record into a human readable format or a reasonably usable electronic format at the request of the staffs of the Commission, any self-regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer].

(B) A designated executive officer who signs the undertaking required pursuant to paragraph (f)(3)(v)(A) of this section may:

(*1*) Appoint in writing up to two designated officers who will take the steps necessary to fulfill the obligations of the designated executive officer set forth in the undertakings in the event the designated executive officer is unable to fulfill those obligations; and

(*2*) Appoint in writing up to three designated specialists.

(C) The appointment of, or reliance on, a designated officer or designated specialist does not relieve the designated executive officer of the obligations set forth in the undertaking.

(4) A broker-dealer using a micrographic media system must:

(i) At all times have available, for examination by the staffs of the Commission, self-regulatory organizations of which it is a member, and any State securities regulator having jurisdiction over the member, broker, or dealer, facilities for immediate, easily readable projection or production of micrographic media and for producing easily readable images;

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer may request;

(iii) Store, separately from the original, a duplicate copy of the record stored on any medium acceptable under this section for the time required; and

(iv) Organize and index accurately all information maintained on both original and duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission, the self-regulatory organizations of which the broker or dealer is a member, and any State securities regulator having jurisdiction over the member, broker or, dealer.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

* * * * *

(i)(1)(i) If the records required to be maintained and preserved pursuant to the provisions of § 240.17a–3 and this section are prepared or maintained by an outside service bureau, depository, bank, or other recordkeeping service, including a recordkeeping service that owns and operates the servers or other storage devices on which the records are preserved or maintained, (none of which operate pursuant to § 240.17a–3(c)) on behalf of the member, broker, or dealer required to maintain and preserve such records, such outside entity must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker, or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker, or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [Name of the Member, Broker, or Dealer], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission and to promptly furnish to said Commission or its designee true, correct, complete and current hard copies of any or all or any part of such books and records.

(ii)(A) If the records required to be maintained and preserved pursuant to the provisions of § 240.17a–3 and this section are maintained and preserved by means of an electronic recordkeeping system as defined in paragraph (f) of this section utilizing servers or other storage devices that are owned or operated by an outside entity (including an affiliate) and the broker, dealer, or member has *independent access* to the records as defined in paragraph (i)(1)(ii)(B) of this section, the outside entity may file with the Commission the following undertaking signed by a duly authorized person in lieu of the undertaking required under paragraph (i)(1)(i) of this section:

The undersigned hereby acknowledges that the records of [name of member, broker, or dealer] are the property of [name of member, broker, or dealer] and [name of member, broker, or dealer] has represented: one, that it is subject to rules of the Securities and Exchange Commission governing the maintenance and preservation of certain records, two, that it has independent access to the records maintained by [name of outside entity], and, three, that it consents to [name of outside entity] fulfilling the obligations set forth in this undertaking. The undersigned undertakes that [name of outside entity] will facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Securities and Exchange Commission as permitted under the law. Further, the undersigned undertakes to facilitate within

its ability, and not impede or prevent, a trustee appointed under the Securities Investor Protection Act of 1970 to liquidate [name of member, broker, or dealer] in accessing, downloading, or transferring the records as permitted under the law.

(B) A broker, dealer, or member utilizing servers or other storage devices that are owned or operated by an outside entity has independent access to records with respect to such outside entity if it can regularly access the records without the need of any intervention of the outside entity and through such access:

(*1*) Permit examination of the records at any time or from time to time during business hours by representatives or designees of the Commission; and

(*2*) Promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records.

(2) An agreement with an outside entity will not relieve such member, broker, or dealer from the responsibility to prepare and maintain records as specified in this section or in § 240.17a–3.

(j) Every member, broker and dealer subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker, or dealer that are required to be preserved under this section, or any other records of the member, broker, or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78*q*(b)) that are requested by the representative of the Commission. The member, broker, or dealer must furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant to paragraph (f) of this section in a reasonably usable electronic format, if requested by a representative of the Commission.

* * * * *

■ 3. Amend § 240.18a–6 by revising paragraphs (e) through (g) to read as follows:

§ 240.18a–6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

* * * * *

(e) Subject to the conditions set forth in this paragraph (e), the records required to be maintained and preserved pursuant to § 240.18a–5 and this section may be immediately produced or reproduced by means of an electronic recordkeeping system and be maintained and preserved for the required time in that form.

(1) For purposes of this paragraph (e):

(i) The term *electronic recordkeeping system* means a system that preserves records in a digital format in a manner that permits the records to be viewed and downloaded;

(ii) The term *designated executive officer* means a member of senior management of the security-based swap dealer or major security-based swap participant who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated executive officer;

(iii) The term *designated officer* means an employee of the security-based swap dealer or major security-based swap participant who reports directly or indirectly to the designated executive officer and who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated officer;

(iv) The term *designated specialist* means an employee of the security-based swap dealer or major security-based swap participant who has access to, and the ability to provide records maintained and preserved on, the electronic recordkeeping system; and

(v) The term *designated third party* means a person that is not affiliated with the security-based swap dealer or major security-based swap participant who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system.

(2) An electronic recordkeeping system of a security-based swap dealer or major security-based swap participant without a prudential regulator must:

(i)(A) Preserve a record for the duration of its applicable retention period in a manner that maintains a complete time-stamped audit trail that includes:

(*1*) All modifications to and deletions of the record or any part thereof;

(*2*) The date and time of actions that create, modify, or delete the record;

(*3*) If applicable, the identity of the individual creating, modifying, or deleting the record; and

(*4*) Any other information needed to maintain an audit trail of the record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record if it is modified or deleted; or

(B) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(ii) Verify automatically the completeness and accuracy of the processes for storing and retaining records electronically;

(iii) If applicable, serialize the original and duplicate units of the storage media, and time-date the required period of retention for the information placed on such electronic storage media;

(iv) Have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in both a human readable format and in a reasonably usable electronic format and to readily download and transfer the information needed to locate the electronic record, as required by the staffs of the Commission, or any State regulator having jurisdiction over the security-based swap dealer or major security-based swap participant; and

(v)(A) Include a backup electronic recordkeeping system that meets the other requirements of this paragraph (e) and that retains the records required to be maintained and preserved pursuant to § 240.18a–5 and in accordance with this section in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or

(B) Have other redundancy capabilities that are designed to ensure access to the records required to be maintained and preserved pursuant to § 240.18a–5 and this section.

(3) A security-based swap dealer or major security-based swap participant using an electronic recordkeeping system must:

(i) At all times have available, for examination by the staffs of the Commission or any State regulator having jurisdiction over the security-based swap dealer or major security-based swap participant, facilities for immediately producing the records preserved by means of the electronic recordkeeping system and for producing copies of those records.

(ii) Be ready at all times to provide, and immediately provide, any record stored by means of the electronic recordkeeping system that the staffs of the Commission or any State regulator having jurisdiction over the security-based swap dealer or major security-based swap participant may request.

(iii) For a security-based swap dealer or major security-based swap participant operating pursuant to paragraph (e)(2)(i)(B) of this section, the security-based swap dealer or major security-based swap participant must have in place an audit system providing for accountability regarding inputting of

records required to be maintained and preserved pursuant to § 240.18a–5 and this section to the electronic recordkeeping system and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times a security-based swap dealer and major security-based swap participant must be able to have the results of such audit system available for examination by the staff of the Commission.

(B) The audit results must be preserved for the time required for the audited records.

(iv) Organize, maintain, keep current, and provide promptly upon request by the staffs of the Commission or any State regulator having jurisdiction over the security-based swap dealer or major security-based swap participant all information necessary to access and locate records preserved by means of the electronic recordkeeping system.

(v)(A) Have at all times filed with the Commission the following undertakings with respect to such records signed by either a designated executive officer or designated third party (hereinafter, the ''undersigned''):

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission'') and its designees or representatives, or any State securities regulator having jurisdiction over [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant], upon reasonable request, such information as is deemed necessary by the staff of the Commission or any State regulator having jurisdiction over [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant], to download copies of a record and its audit trail (if applicable) preserved by means of an electronic recordkeeping system of [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant] into both a human readable format and a reasonably usable electronic format in the event of a failure on the part of [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant] to download a requested record or its audit trail (if applicable).

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to the information preserved by means of an electronic recordkeeping system of [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant], including, as appropriate, downloading any record required to be maintained and preserved by [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant] pursuant to §§ 240.18a–5 and 240.18a–6 in a format acceptable to the staff of the Commission or any State regulator having jurisdiction over [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant]. Specifically, the undersigned will take reasonable steps to, in the event of a failure on the part of [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant] to download the record into a human readable format or a reasonably usable electronic format and after reasonable notice to [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant], download the record into a human readable format or a reasonably usable electronic format at the request of the staff of the Commission or any State regulator having jurisdiction [Name of the Security-Based Swap Dealer or Major Security-Based Swap Participant].

(B) A designated executive officer who signs the undertaking required pursuant to paragraph (e)(3)(v)(A) of this section may:

(*1*) Appoint in writing up to two designated officers who will take the steps necessary to fulfill the obligations of the designated executive officer set forth in the undertakings in the event the designated executive officer is unable to fulfill those obligations; and

(*2*) Appoint in writing up to three designated specialists.

(C) The appointment of, or reliance on, a designated officer or designated specialist does not relieve the designated executive officer of the obligations set forth in the undertaking.

(f)(1)(i) If the records required to be maintained and preserved pursuant to the provisions of § 240.18a–5 and this section are prepared or maintained by a third party, including by a third party that owns and operates the servers or other storage devices on which the records are preserved or maintained, on behalf of the security-based swap dealer or major security-based swap participant, the third party must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the security-based swap dealer or major security-based swap participant and will be surrendered promptly on request of the security-based swap dealer or major security-based swap participant and including the following provision:

With respect to any books and records maintained or preserved on behalf of [SBSD or MSBSP], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.

(ii)(A) If the records required to be maintained and preserved pursuant to the provisions of § 240.18a–5 and this section are maintained and preserved by means of an electronic recordkeeping system as defined in paragraph (e) of this section utilizing servers or other storage devices that are owned or operated by a third party (including an affiliate) and the security-based swap dealer or major security-based swap participant has *independent access* to the records as defined in paragraph (f)(1)(ii)(B) of this section, the third party may file with the Commission the following undertaking signed by a duly authorized person in lieu of the undertaking required under paragraph (f)(1)(i) of this section:

The undersigned hereby acknowledges that the records of [SBSD or MSBSP] are the property of [SBSD or MSBSP] and [SBSD or MSBSP] has represented: one, that it is subject to rules of the Securities and Exchange Commission governing the maintenance and preservation of certain records, two, that it has independent access to the records maintained by [name of third party], and, three, that it consents to [name of third party] fulfilling the obligations set forth in this undertaking. The undersigned undertakes that [name of third party] will facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Securities and Exchange Commission as permitted under the law.

(B) A security-based swap dealer or major security-based swap participant utilizing servers or other storage devices that are owned or operated by a third party has independent access to records with respect to such third party if it can regularly access the records without the need of any intervention of the third party and through such access:

(*1*) Permit examination of the records at any time or from time to time during business hours by representatives or designees of the Commission; and

(*2*) Promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records.

(2) Agreement with a third party will not relieve such security-based swap dealer or major security-based swap participant from the responsibility to prepare and maintain records as specified in this section or in § 240.18a–5.

(g) Every security-based swap dealer and major security-based swap participant subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the security-based swap dealer or major security-based swap participant that are required to be preserved under this section, or any other records of the security-based swap dealer or major

security-based swap participant subject to examination or required to be made or maintained pursuant to section 15F of the Act that are requested by a representative of the Commission. The security-based swap dealer and major security-based swap participant must furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant to paragraph (e) of this section in a reasonably usable electronic format, if requested by a representative of the Commission.

* * * * *

By the Commission.

Dated: October 12, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–22670 Filed 11–2–22; 8:45 am]

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Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 406, 407, et al.

Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 400, 406, 407, 408, 410, 423, 431, and 435

[CMS–4199–F]

RIN 0938–AU85

Medicare Program; Implementing Certain Provisions of the Consolidated Appropriations Act, 2021 and Other Revisions to Medicare Enrollment and Eligibility Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of the Consolidated Appropriations Act, 2021 (CAA). Additionally, we are proposing to delete references to specific Medicare forms from the text of existing regulations at §§ 406.7 and 407.11 in order to provide greater administrative flexibility. Finally, this final rule updates the various federal regulations that affect a State's payment of Medicare Part A and B premiums for beneficiaries enrolled in the Medicare Savings Programs and other Medicaid eligibility groups.

DATES: This final rule is effective on January 1, 2023, except for the addition of § 407.47(f) at instruction 21, which is effective on January 1, 2024.

FOR FURTHER INFORMATION CONTACT:

Major Bullock, (410) 786–8974, or Steve Manning (410) 786–1961—General questions.

Steve Manning, (410) 786–1961, or Carla Patterson (410) 786–8911—For inquiries related to section 120 of the CAA.

Gail Sexton, (410) 786–4583, or Major Bullock, (410) 786–8974—For inquiries related to section 402 of the CAA.

Melissa Heitt, 410–786–4494—For inquiries related to section 402(f) (Medicare Savings Programs) of the CAA.

Carla Patterson, (410) 786–8911—For inquiries related to the Medicare enrollment form.

Kim Glaun, (410) 786–3849—For inquiries related to State payment of Medicare premiums.

SUPPLEMENTARY INFORMATION:

I. Summary

A. Beneficiary Enrollment Simplification in Medicare Parts A and B—Background and Proposal Summary

Medicare is a Federal program to provide health insurance for people age 65 and older, and those under 65 with certain disabilities or End-Stage Renal Disease (ESRD). Medicare consists of four distinct parts, commonly referred to as Medicare Parts A, B, C and D. Medicare Part A, sometimes referred to as hospital insurance (HI), covers inpatient hospital services, skilled nursing care, hospice care, and some home health services. Individuals must meet certain conditions to be entitled to Part A. Medicare Part B, or supplementary medical insurance (SMI), is an optional benefit that helps cover medically necessary services and supplies like physicians' services, durable medical equipment (DME), outpatient care, and other medical services that Part A does not cover, including many preventive services. Together, Medicare Parts A and B comprise ''original'' or ''traditional'' Medicare. Most beneficiaries are automatically enrolled in Part A and Part B by the Social Security Administration (SSA) or the Railroad Retirement Board (RRB) when they turn 65 because they are already receiving social security or RRB retirement benefits. In addition, if an individual has been receiving Social Security or Railroad Retirement Disability benefits for 24 months, they will automatically be enrolled by SSA or the Railroad Retirement Board in Medicare Parts A and B.

The first opportunity individuals have to enroll in Part B is during their initial enrollment period (IEP). The IEP is a 7-month period that usually begins 3 months before the month in which an eligible individual turns 65 and ends 3 months after the first month of eligibility. The next opportunity for eligible individuals who do not enroll in Part B during their IEP to enroll in Part B, if they choose to do so, is in the general enrollment period (GEP) which runs from January 1st through March 31st each year. Currently, an individual's entitlement (coverage period effective date) under Part B depends on the enrollment period and the month in which the individual enrolls, according to the requirements in sections 1837 and 1838 of the Social Security Act (the Act).

For those who enroll in Medicare Part B during any of the first 3 months of their IEP, coverage is effective the first month they become eligible for Medicare (such as age 65 or the 25th month of entitlement to monthly Social Security or railroad retirement benefits based on disability). However, for those who enroll in any of the last 4 months of their IEP, their coverage becomes effective after their month of enrollment, with the effective date of coverage varying depending on the month in which they enroll. For eligible individuals who enroll during the GEP, coverage is effective the July 1 following the month in which the individual enrolls.

Section 120 of the Consolidated Appropriations Act, 2021 (CAA), Public Law (Pub. L.) 116–260, Division CC, title I, section 120 (December 27, 2020), modified the requirements in section 1838 of the Act, pertaining to individuals enrolling in Part B after not being automatically enrolled, or who are re-enrolling in Part B after disenrollment. Specifically, the CAA revised sections 1838(a)(2)(C), 1838(a)(3)(A), and 1838(a)(2)(D) of the Act to provide that for individuals who become eligible for Medicare on or after January 1, 2023, and enroll in Part B during the last 3 months of their IEP, entitlement would begin the first day of the month following the month in which they enroll. We proposed conforming changes to our regulations at 42 CFR part 407 to implement these Part B changes. In addition, while the statutory provisions of section 120 of the CAA primarily affect individuals enrolling in Part B, those changes will also affect the requirements applicable to the limited number of individuals enrolling in Part A who are not entitled to premium-free Part A. We proposed conforming modifications to our regulations at 42 CFR part 406 to reflect those Part A changes.

Additionally, section 120 of the CAA established new section 1837(m) of the Act, which provides authority for the Secretary of the Department of Health and Human Services (HHS) (the Secretary) to establish special enrollment periods (SEPs) for individuals who are eligible to enroll in Medicare and meet such exceptional conditions as the Secretary may provide, effective January 1, 2023. Corresponding changes in section 1838(g) of the Act provides the Secretary the discretion to determine the effective date of entitlement for individuals who enroll under an SEP for exceptional conditions, and amendments to section 1839(b) of the Act exempt individuals enrolling under such an SEP from being subject to a late enrollment penalty (LEP). We proposed to establish several SEPs for exceptional conditions that would be incorporated

in our regulations under 42 CFR parts 406 and 407.

B. Extended Coverage of Immunosuppressive Drugs for Certain Kidney Transplant Patients—Background and Proposal Summary

ESRD is a medical condition in which a person's kidneys cease functioning permanently, leading to the need for a regular course of long-term dialysis or a kidney transplant to maintain life. A kidney transplant is ultimately considered the best treatment for ESRD. Section 226A of the Act includes a provision that enables certain individuals diagnosed with ESRD to be entitled to Medicare, regardless of age. If an individual with ESRD applies for Medicare and is entitled to Medicare Part A and eligible for Part B benefits, Medicare provides coverage for all covered medical services, not only those related to the kidney failure condition. When an individual receives a kidney transplant, Medicare coverage extends for 36 months after the month in which the individual receives the transplant. Currently, after the 36th month, Medicare coverage ends unless the individual is eligible for Medicare on another basis, such as age or disability. Medicare Part B covers medical and other health services including, as specified in section 1861(s)(2)(J) of the Act, prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made. Kidney transplant recipients must take immunosuppressive drugs to help prevent their immune systems from rejecting the transplanted kidney. If a transplanted kidney is rejected, the individual would revert to ESRD status and again need dialysis treatment or another transplant.

Under current law, Medicare Part B beneficiaries have coverage for such immunosuppressive drug therapy for as long as they remain eligible for and enrolled in Medicare Part B. However, section 226A(b)(2) of the Act currently requires that entitlement to Medicare Part A and eligibility to enroll under Part B for ESRD beneficiaries ends with the 36th month after the month in which the individual receives a kidney transplant (see also 42 CFR 406.13(f)(2)). Section 402 of the CAA amended sections 226A(b)(2) (and made conforming changes to sections 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act) to make certain individuals eligible for enrollment under Medicare Part B solely for the purpose of coverage of immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. Effective January 1, 2023, this provision allows certain individuals whose Medicare entitlement based on ESRD would otherwise end after a kidney transplant to continue enrollment under Medicare Part B only for the coverage of immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. These individuals would not receive Medicare coverage for any other items or services (under either Part A or Part B), and would only be eligible for immunosuppressive drug coverage under Part B if they are not enrolled in certain other types of coverage, as described in ''Eligibility for the Part B–ID Benefit'' (section II.B.2.b. of this final rule). Section 402 of the CAA also amended the Medicare Savings Programs (MSPs) under sections 1905(p)(1)(A) and 1902(a)(10)(E) of the Act to pay the Part B premiums and in some cases the costs of the Part B deductible and coinsurance for immunosuppressive drug coverage for certain low-income individuals.

C. Simplifying Regulations Related to Medicare Enrollment Forms—Background and Proposal Summary

Individuals who receive monthly Social Security or railroad retirement benefits at age 65 or have been entitled to monthly Social Security or railroad retirement benefits based on disability benefits for more than 24 months, are automatically entitled to Part A and do not have to file a separate application in order to enroll in premium-free Part A. These individuals are automatically enrolled (auto-enrolled) by the Social Security Administration or the Railroad Retirement Board into Part A when they reach age 65 or their 25th month of entitlement to Social Security or railroad retirement benefits based on disability. Individuals who become eligible for premium-free Medicare but who are not auto-enrolled, either because they have delayed receiving Social Security or railroad retirement benefits, or are not eligible for such benefits but are otherwise eligible to receive premium-free Medicare part A based on paying the Medicare payroll tax, must file a separate application to enroll in Medicare. Individuals who decide to collect Social Security benefits after they reach age 65, and thus did not get auto-enrolled in Medicare by virtue of receiving Social Security benefits, may use their application for Social Security benefits, as defined in 42 CFR 400.200, to apply for Medicare if they are eligible for Part A at that time. Individuals may also separately request enrollment in Part B by answering the Part B enrollment questions on an application for monthly Social Security retirement or spousal benefits. As an alternative, individuals may enroll in Part B by signing a simple statement of request, if they are eligible to enroll at that time.

Currently, there are a total of seven enrollment forms for traditional Medicare—two enrollment forms for Part A and five enrollment forms for Part B, in §§ 406.7 and 407.11, respectively. Medicare enrollment forms are available to individuals via mail from CMS or SSA, downloadable via the CMS [1] and SSA [2] websites, or in person at SSA field offices. CMS and SSA periodically review the enrollment forms to determine if updates are necessary to comply with statutory, regulatory, or operational changes. Our regulations currently identify each form by name and provide a brief description of its uses.

We proposed to remove references to individual enrollment forms from our regulations, including their titles and brief descriptions, to provide greater administrative flexibility in updating, adding, or removing forms in the future. We also proposed to make technical edits to the text at § 406.7 to state that an individual who files an application for monthly Social Security cash benefits as defined in § 400.200 also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time. Current regulations do not define Social Security cash benefits. We proposed to provide more clarity on when a Social Security application also applies for Medicare entitlement to Part A.

D. Modernizing State Payment of Medicare Premiums—Background and Proposal Summary

Since the implementation of the original Medicare program in 1966, section 1843 of the Act has provided States the option to enter into an ''agreement'' with the Federal government under which a State commits to enrolling certain Medicare-eligible Medicaid beneficiaries into Medicare Part B with the State paying the Part B premiums on their behalf. Section 1903(a)(1) and (b) of the Act authorize federal financial participation (FFP) for such State payment of Part B premiums for certain dually eligible individuals. We have historically referred to this process as ''State buy-in.'' All 50 States and the District of

[1] *https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/CMS-Forms-List.*

[2] *https://www.ssa.gov/forms/.*

Columbia have buy-in agreements for Part B [3] with the Secretary.

States pay Medicare Part B premiums for approximately 10 million individuals and Part A premiums for approximately 700,000 individuals each year who are not entitled to Part A without a premium. For an individual who is eligible for but not yet enrolled in Medicare, State buy-in serves to both enroll the individual in Medicare and enable the Federal Government to bill the State for the new beneficiary's Medicare premiums. For an individual who is already enrolled in Medicare, State buy-ins enable the Federal Government to bill the State for the individual's Medicare premiums and stop collecting the premiums through deductions from the beneficiary's monthly Social Security (Old Age Insurance or Disability benefits or Supplemental Security Income), Railroad Retirement Board (RRB), or Office of Personnel Management (OPM) benefits, or through CMS direct billing.

The impact of State buy-in is significant for many beneficiaries. Low-income individuals who receive assistance with Medicare premiums save critical funds to use for other necessities, including food and housing. Upon State buy-in, individuals who were paying the Medicare premiums through deductions from their Social Security benefits see a notable increase in their monthly social security checks (the standard Part B premium will be $164.90 per month in 2023), and individuals eligible but not enrolled in Medicare are able to enroll in the program and access Medicare services.

We proposed several technical updates to the regulations pertaining to State buy-in that would better align them with federal statute, policy and operations that have evolved over time. We also proposed revising the regulations to provide that approved State plan provisions governing the buy-in process constitute a State's buy-in agreement and limiting retroactive Medicare Part B premium liability for States for full-benefit dually eligible beneficiaries.

[3] Thirty-seven States (including the District of Columbia) also have buy-in agreements for Part A.

II. Provisions of the Proposed Rule and Analysis of and Responses to Public Comments

A. Proposals for Beneficiary Enrollment Simplification (§§ 406.21, 406.22, 406.27, 406.33, 406.34, 407.23, 407.25, and 408.24)

1. Effective Dates of Entitlement

While the majority of individuals are automatically enrolled in Medicare Parts A and B upon reaching age 65 or when they have been entitled to monthly Social Security or railroad retirement benefits based on disability for more than 24 months, certain individuals are required to take active steps to enroll. Specifically, individuals who are eligible for, but not receiving, monthly Social Security benefits under section 202 of the Act or qualified RRB benefits when they turn 65, are not auto-enrolled because they have elected not to start receiving their Social Security or RRB benefits and have not filed an application for Social Security or RRB benefits and must take separate action to apply for Medicare. Certain individuals who are entitled to premium free Part A through government employment, but are not eligible for Social Security or RRB benefits also have to take action to apply for Medicare. Individuals may apply for Part A at any time, but can only apply for Part B during a specific enrollment period (IEP, GEP, or SEP). Further, under section 1818 of the Act, certain individuals who are not otherwise entitled to Part A but meet certain requirements, are eligible to enroll in Part A. These individuals are required to pay monthly premiums under section 1818(d) of the Act, and this benefit is frequently referred to as ''premium Part A.'' These individuals are required to take active steps to enroll in premium Part A and Part B.

- *IEP:* The period during which individuals eligible for premium Part A are entitled to receive benefits under Medicare, also known as the coverage period, can vary depending on when the individual enrolls. The first opportunity individuals have to enroll in Part B is during their IEP. Section 1837(d) of the Act defines the IEP for most individuals who become eligible for Medicare on or after March 1, 1966. For individuals age 65 and older enrolling in Part A, the IEP is the 7-month period that begins 3 months before the month in which the individual is first eligible for Medicare and ends 3 months after the first month of eligibility.
- *Deemed IEP:* Section 1837(d) of the Act also defines what is commonly referred to as the ''deemed IEP.'' When an individual fails to enroll during their IEP because of a belief, based on documentary evidence, that he or she had not yet attained age 65, section 1837(d) of the Act requires the Secretary to establish an IEP for such individual based on the time shown in such documentary evidence of the individual attaining age 65. Such individuals are considered ''deemed'' to have enrolled for purposes of section 1838(a)(3) of the Act, and these individuals are subject to entitlement periods consistent with those for individuals not subject to a deemed initial enrollment period under 42 CFR 407.14.
- *GEP:* Eligible individuals who do not enroll in Part B during their IEP or deemed IEP, or who disenroll from Part B and wish to re-enroll, must generally do so during the GEP. The GEP is established under section 1837(e) of the Act, and is the period beginning on January 1 and ending on March 31 of each year.

Section 1838(a) of the Act establishes the beginning of entitlement for Part B for individuals who enroll in their IEP or GEP. According to the current requirements established under sections 1838(a)(2)(A) and 1838(a)(3)(A) of the Act individuals who become eligible to enroll in Medicare under section 1836(a) of the Act before January 1, 2023, and enroll:

- During the first 3 months of their IEP or deemed IEP, their entitlement would begin on the first day of the month they turn 65.
- The month in which they become eligible, sections 1838(a)(2)(B)(i) and 1838(a)(3)(B)(i) of the Act currently specify that their entitlement begins with the first day of the month following the month in which they enroll.
- The month in which they satisfy the requirements of section 1836(a) of the Act, their entitlement would begin with the first day of the second month after the month in which they enroll under sections 1838(a)(2)(B)(ii) and 1838(a)(3)(B)(i) of the Act.
- During the last 2 months of their IEP or deemed IEP, their entitlement under Medicare would be effective beginning with the first day of the third month after the month in which he or she enrolls according to sections 1838(a)(2)(B)(iii) and 1838(a)(3)(B)(i) of the Act.
- Under the GEP sections 1838(a)(2)(D)(i) and 1838(a)(3)(B)(i) provide that their entitlement would begin with the first of July following their enrollment.

Section 120(a)(1) of the CAA revised the entitlement periods for individuals who enroll in Medicare Part B in the last 3 months of their IEP, deemed IEP, or

during the GEP, beginning January 1, 2023. Specifically, the CAA modified section 1838 of the Act such that revised section 1838(a)(2)(C) and (a)(3)(B)(ii) of the Act provide that for a Medicare eligible individual who satisfies the requirements of section 1836(a) of the Act (*i.e.,* is entitled to Part A, or, is age 65, a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment), in a month beginning on or after January 1, 2023, and who enrolls in the month in which they satisfy those requirements, or in any subsequent month of their IEP, the individual's entitlement would begin with the first day of the month following the month of enrollment. The CAA also revised sections 1838(a)(2)(D)(ii) and 1838(a)(3)(B)(ii) of the Act to provide that for individuals who enroll during the GEP in a month beginning on or after January 1, 2023, their entitlement would begin with the first day of the month following the month in which they enroll. An example of the current entitlement dates compared to the revisions made by the CAA is provided in the table:

Enrolls in IEP:	Prior to 1/1/23—Entitlement begins on:	On or After 1/1/23—Entitlement begins on:
January	April 1 (month eligibility requirements first met)	April 1 (month eligibility requirements first met).
February	April 1	April 1.
March	April 1	April 1.
April	May 1 (month following month of enrollment)	May 1.
May	July 1 (second month after month of enrollment)	June 1.
June	September 1 (third month after month of enrollment)	July 1.
July	October 1 (third month after month of enrollment)	August 1.
January	July 1	February.
February	July 1	March.
March	July 1	April.

As shown in the chart, the changes made to section 1838(a) of the Act according to section 120 of the CAA directly affect the requirements for individuals enrolling in Part B. However, these changes will also impact certain individuals enrolling in Part A. Section 1818(c) of the Act specifically requires in part that the provisions of section 1838 of the Act apply to individuals enrolling in premium Part A for purposes of determining the period of enrollment and other aspects of coverage. In light of this statute, the revised entitlement periods established in section 1838(a) of the Act will also apply to premium Part A enrollees.

To implement the changes to 1838(a) of the Act, we proposed to revise language in both 42 CFR part 406 (for premium Part A) and 42 CFR part 407 (for Part B). Specifically, we proposed the following to reflect changes related to the start of entitlement for premium Part A IEP enrollments as summarized:

- Revised § 406.22(a) would apply the existing requirements governing the entitlement period for individuals who are age 65 or older before January 1, 2023 who enroll in premium Part A during their IEP.
- New § 406.22(b) would lay out the entitlement dates for individuals who attained age 65 on or after January 1, 2023, and who enroll during their IEP, including a deemed IEP.
- Newly redesignated and revised § 406.22(c) would apply the existing entitlement date requirements for individuals under age 65 who became eligible for Medicare prior to January 1, 2023.
- New § 406.22(d) would set out the start dates for entitlement for individuals under age 65 who enroll in premium Part A on or after January 1, 2023.

We also proposed the following to reflect changes related to the start of entitlement for individuals enrolling in Part B during their IEP:

- Revised § 407.25(a)(1) applied the existing entitlement date requirements to individuals who first satisfy the Part B eligibility requirements before January 1, 2023 and enroll during their IEP or deemed IEP.
- Revised § 407.25(a)(2) applied new entitlement dates requirements to individuals who first satisfy the Part B eligibility requirements on or after January 1, 2023.

Section 120(a)(1)(A) of the CAA also modified section 1838(a)(2) of the Act, to address the beginning of the entitlement for individuals enrolling during their GEP according to 1837(e) of the Act. We proposed the following changes to reflect the updates in entitlement for individuals enrolling during the GEP:

- Revised § 406.21(c)(3) reflected the revised entitlement periods for individuals who enroll or reenroll during a GEP.
- Revised § 407.25(b)(1) specified that for individuals enrolling or reenrolling in Part B during a GEP before January 1, 2023, the current requirements governing the entitlement date would continue to apply.
- New § 407.25(b)(3) specified that for individuals who enroll or reenroll in Part B during a GEP on or after January 1, 2023, entitlement would begin the first day of the month following the month of enrollment.

We received a large number of comments related to our proposals for effective dates of entitlements. The comments on those proposals and our responses follow:

Comment: All commenters on this proposal expressed support for the proposed changes to the effective dates. Many of the comments referred to the positive outcomes that will result from the proposal. The commenters expressed that the proposed changes to the effective dates will alleviate much of the confusion surrounding Medicare enrollment. Commenters also noted that the changes will ease the stress individuals face with regard to waiting months for their enrollment to start and allow them to receive coverage in a timelier manner. A few commenters noted that outreach and education materials, including translated materials, will need to be updated to reflect these changes.

Response: We appreciate the overwhelming support for our proposal and thank those that took the time to give us feedback. We are in agreement with commenters that these changes will simplify the enrollment process and will result in a more efficient and positive experience for those seeking to enroll in Medicare. We will also take measures to update publications, training materials, and other outreach materials, as well as work with Medicare stakeholders, to update educational and outreach materials with the new changes. This includes that translation of materials into multiple different languages as needed.

Comment: A commenter had a concern in regards to when the proposed changes would be implemented. Specifically, they stated that the Medicare Part A changes would be effective in 2023 and the Medicare Part B proposed changes would be effective in 2022, and they recommended that these proposals be implemented simultaneously.

Response: We appreciate the feedback from the commenter and clarify that, as proposed, these changes for both Medicare Parts A and B are effective for enrollments on or after January 1, 2023. This timeframe is also articulated in Section 120 of the CAA.

Comment: Another commenter expressed concern for individuals that may wish to delay their coverage to begin after retirement and provided an example of a teacher that becomes Medicare eligible in the fall but wishes to delay enrollment until retirement in May. The commenter requested an arrangement be made in this regulation to allow for individuals to delay enrollment until retirement.

Response: When an individual is determining their plan for enrollment and considering when they want their Medicare coverage to become effective, they should keep in mind all enrollment opportunities available, such as the various enrollment periods and the group health plan (GHP) SEP (Sections 1837(i)(1) through (3)), which has different rules for when coverage becomes effective. The GHP SEP allows individuals to enroll at a later date as long as they were covered under insurance through their employer. Those wishing for their coverage to begin after retirement may be eligible and could consider this option.

Comment: A few commenters expressed support for the proposed changes but provided feedback on areas that were not addressed in the proposed rule. A commenter believed that the 2-year waiting period to receive Medicare while receiving Social Security Disability Insurance (SSDI) benefits is too long and that SSDI beneficiaries seeking to enroll in Medicaid should not have to adhere to any income restrictions or waiting periods. Another commenter suggested that we include more detailed language related to beneficiary coverage through telehealth. Lastly, a commenter suggested that we update the SEP for Medicare Advantage Prescription Drug Plan or stand-alone Part D Prescription Drug Plan during the Part B GEP (located at § 423.38(c)(16)) to align with the changes in the proposed rule.

Response: We thank the commenters for their support of the proposed changes but note that these areas are outside of the scope of this rulemaking.

We appreciate the feedback that we received on the entitlement date changes from commenters. Based on analysis of the public comments, we will be finalizing the proposals related to entitlement effective dates as proposed.

2. Special Enrollment Periods for Exceptional Conditions

Under normal conditions, individuals who want to enroll in premium Part A, Part B, or both must submit a timely enrollment request during their IEP, the GEP, or an existing SEP for which they are eligible. Those who fail to enroll during their IEP may face an LEP [4] and a potential gap in coverage. Prior to the enactment of the CAA, CMS did not have broad authority to create SEPs based on exceptional conditions for enrollees in Medicare Parts A and B.[5] Section 120(a)(2)(A) of the CAA established section 1837(m) of the Act to provide the Secretary with authority to establish SEPs for individuals who satisfy the requirements in paragraph (1) or (2) of section 1836(a) of the Act, and meet such exceptional conditions as the Secretary may provide, beginning January 1, 2023. Section 120 of the CAA also created section 1838(g) of the Act to provide the Secretary the discretion to determine the entitlement period for individuals who enroll pursuant to an SEP established according to section 1837(m) of the Act, in a manner that protects the continuity of health benefit coverage to the extent practicable. The CAA also modified section 1839(b) of the Act to exempt individuals who enroll pursuant to an SEP for exceptional conditions established under section 1838(m) of the Act, from paying an LEP. Section 1818(c) of the Act provides that individuals enrolling under premium Part A are generally afforded the same enrollment opportunities as those available under Part B, so our proposals would apply to both premium Part A and Part B, except where noted. Several SEPs currently exist that permit individuals to enroll in premium Part A or Part B outside of the IEP or GEP, including the following:

- Sections 1837(i)(1) through (3) of the Act provide an SEP for certain individuals who are enrolled in a qualified group health plan (GHP) or large GHP (LGHP) at the time they first become eligible for Medicare and elect not to enroll (or to be deemed enrolled) in Medicare during their IEP.
- Section 1837(i)(4) of the Act establishes an SEP for certain individuals who, when first eligible for Medicare, were enrolled in a group health plan (GHP) or large group health plan (LGHP) by reason of their own (or a family member's) current or former employment, and whose coverage ended at a time when enrollment in the plan was not based on current employment.
- Section 1837(k) of the Act establishes an SEP for individuals serving as volunteers outside the United States at the time they first become eligible for Medicare, through a program covering at least a 12-month period, sponsored by a 501(c)(3) tax exempt organization, and who demonstrate health insurance coverage while serving in the program.
- Section 1837(l) of the Act establishes a 12-month SEP for certain individuals who are enrolled in TRICARE and become eligible to enroll in Part A on the basis of disability or ESRD status under sections 226(b) or 226A of the Act, respectively, but who elect not to enroll (or to be deemed enrolled) during their IEP.

There is an appeal process, under SSA guidance, for individuals who are denied for one of the current SEPs. If an individual disagrees with an initial determination or decision, they may request further review under the administrative review process, also known as the appeal process. This process will also apply to the newly established SEPs. We proposed to establish five new exceptional conditions SEPs under section 1837(m) of the Act in §§ 406.27 and 407.23 of the regulations for Medicare parts A and B, respectively. These five SEPs are for individuals impacted by an emergency or disaster, health plans or employers misrepresenting or providing incorrect information, the termination of Medicaid coverage, formally incarcerated, and other exceptional conditions. We proposed that these SEPs would be available to individuals who miss an IEP, GEP, or another SEP, such as the GHP SEP, due to a covered exceptional condition. (We note that in discussing these changes in the preamble of the proposed rule at 87 FR 25092, 25126, and 25128 we erroneously referred to § 407.22 instead of § 407.23 and are now correcting that error.)

In determining what new exceptional conditions SEPs would be beneficial to the Medicare program and its beneficiaries and that should be established in regulations, we

[4] An LEP is an amount added to the monthly premium that can be applied to individuals who do not sign up during their IEP. See 42 CFR 406.32(a) and 408.22.

[5] CMS has separate authority for Medicare Parts C and D under sections 1851(e)(4)(d) and 1860D–1(b)(3)(C) of the Act, respectively.

considered numerous factors including the following:

- Whether the conditions that caused the individual to miss an enrollment period are ''exceptional'' as required under the CAA, and whether the conditions are likely to be a one-time event.
- The SEP should not create an incentive for individuals to delay timely enrollment into Medicare.
- The SEP should not create an incentive for individuals to not educate themselves about the importance of enrolling in Medicare timely and make informed decisions during other available enrollment periods.
- Whether an SEP would be the most appropriate resolution to the exceptional conditions in question and whether other remedies such as individualized equitable relief under section 1837(h) of the Act, would more appropriately apply.
- The SEP should be expected to apply to a significant number or broad category of individuals, which would justify the establishment of a specific SEP in regulation instead of relying on the Secretary's authority under section 1837(h) of the Act to evaluate individual conditions and approve SEPs on a case-by-case basis.

With these parameters in mind, we leveraged our previous program experience with Medicare enrollment in determining which SEPs to propose. We also considered the SEPs for exceptional conditions established under Medicare Parts C and D (section 1851(e)(4) of the Act), the Health Insurance Marketplace (29 U.S.C. 1163), and commercial health plans for insight into what SEPs are available in both public and private healthcare settings. Finally, we also considered whether the proposed new SEPs and the associated entitlement would protect access to continuous coverage for individuals eligible for Medicare Part A and Part B, such as through expediting individuals' entitlement date or by creating opportunities for individuals to enroll in coverage sooner.

Based on these considerations, we proposed to establish five SEPs under Medicare Parts A and B based on the Secretary's authority in section 1837(m) of the Act. Four of the proposed SEPs address specific exceptional conditions. One SEP would permit CMS or SSA to evaluate individuals' particular conditions and grant SEPs on a case-by-case basis due to unanticipated conditions that may arise in the future.

To accommodate these changes, we proposed to establish a new § 406.27, entitled ''Special enrollment periods for exceptional conditions'' to provide SEPs for individuals who missed enrolling in premium Part A during an enrollment period due to exceptional conditions. Similarly, we proposed to establish a new § 407.23, also entitled ''Special enrollment periods for exceptional conditions'' to provide SEPs for individuals who missed enrolling in Part B during an enrollment period due to exceptional conditions. Both proposed §§ 406.27(a) and 407.23(a) provided in part that the SEPs for exceptional conditions would be available beginning January 1, 2023. Specifically, the proposed SEPs for exceptional conditions would be applicable for exceptional conditions that took place on or after January 1, 2023 with the exception of the SEP to Coordinate with Termination of Medicaid Coverage discussed in section II.2.d. of this final rule.

a. Late Enrollment Penalties Associated With Special Enrollment Periods for Exceptional Conditions

Section 120(a)(2)(C)(ii) of the CAA modified section 1839(b) of the Act and provides that individuals who enroll during an SEP established under the Secretary's authority under new section 1837(m) of the Act are not subject to the LEP. Specifically, section 1839(b) of the Act, as amended, provides that an individual who enrolls in Medicare ''after his initial enrollment period [. . .] and not pursuant to a special enrollment period under subsection (i)(4), (l), or (m) of section 1837 [. . .] shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled.'' Therefore, we proposed the following:

- For enrollments on or after January 1, 2023 under one of the SEPs established pursuant to the Secretary's authority in section 1837(m) of the Act and established in § 406.27 (Special enrollment periods for exceptional conditions), we proposed at § 406.33(c)(2) that any months of non-coverage would be excluded from the calculation of the LEP.
- For enrollments on or after January 1, 2023 under one of the SEPs established pursuant to the Secretary's authority in section 1837(m) of the Act and established in § 407.23 (Special enrollment periods for exceptional conditions), we proposed at § 408.24(b)(2) that any months of non-coverage would be excluded from the calculation of the LEP.
- For individuals who reenroll prior to January 1, 2023, we proposed at §§ 406.34(a) and 408.24(c) that requirements currently in place for determining the months taken into account for purposes of calculating the LEP would continue to apply.
- For reenrollments on or after January 1, 2023, pursuant to one of the SEPs for exceptional conditions established under the Secretary's authority in section 1837(m) of the Act and promulgated in §§ 406.27 or 407.23, respectively, we proposed at §§ 406.34(e) and 408.24(d)(2)(ii) that any months of non-coverage would be excluded from the calculation of the LEP. We clarified in the proposed rule that if the individual fails to enroll or reenroll during the available exceptional condition SEP, any months of non-coverage, including the months during the exceptional condition SEP, would be taken into consideration for calculating the LEP in accordance with §§ 406.33, 406.34, and 408.22.

We received a large number of comments related our proposed SEPs. The discussion pertains to comments related to our overall SEP authority and provides our responses to those comments.

Comment: Commenters supported the five proposed SEPs, including CMS's proposal to exclude months of non-coverage from the calculation of the LEP, and several commenters applauded our efforts to expand access to Medicare coverage with this new rule. Many cited that these new SEPs would add to the agency's commitment to health equity by helping to reduce disparities. A commenter stated that ''these provisions may also help maintain the financial viability of the emergency care safety net.'' Similarly, others agreed with our reasoning for these proposed SEPs, stating that they would address several of the barriers to timely Medicare enrollment and reduce coverage gaps and access to healthcare, including mental health services.

Response: We thank all commenters for their support on the five proposed SEPs. Many of the inferences trumpeted by the commenters align with our reasoning for proposing these provisions. We remain committed to advancing health equity for all by improving access and eliminating barriers, to Medicare.

Comment: A commenter strongly encouraged CMS and SSA to use existing data resources to automatically apply these SEPs for individuals who are able to provide basic documentation with their enrollment materials. They added that CMS and SSA should include information about how the process will be streamlined with notification of the SEP. Furthermore, this commenter urged CMS to consider

alternative communication methods, in addition to mail, to ensure individuals are aware of the SEPs.

Response: We appreciate the suggestion to ease processes for beneficiaries, but we are unable to automatically apply these SEPs for individuals who wish to enroll in Medicare. Use of the proposed SEPs requires that an individual misses their enrollment period due to a qualifying event. For us to know that information, the individual must initiate contact with SSA, which will allow SSA to verify their validity for an exceptional condition SEP. For these reasons, we decline to adopt the commenter's recommendation to automatically apply this SEP to eligible individuals at this time, but we may consider options to work closely with stakeholders to streamline processes in future rulemaking. In regard to alternative methods of communication, we appreciate the suggestion, and CMS is committed to updating our websites and working with stakeholders to ensure adequate awareness of the availability of these new SEPs as appropriate.

Comment: A commenter was concerned that the proposed SEPs were limited to a narrow group of individuals who were specifically enrolled in a group health plan when they first became eligible to enroll in Medicare.

Response: To clarify, the proposed exceptional condition SEPs are available to any individual who qualifies and are not specific to those enrolled in a group health plan when first eligible for Medicare.

b. SEP for Individuals Impacted by an Emergency or Disaster

We proposed an SEP for individuals impacted by a government-declared emergency or disaster under the Secretary's authority to establish SEPs beginning January 1, 2023, under section 1837(m) of the Act. Establishing such an SEP would permit the agency to provide immediate relief to individuals impacted by certain government-declared emergencies and disasters without being subject to the requirements applicable under our existing equitable relief authority.[6] These SEPs would apply for individuals enrolling in premium Part A or Part B and would eliminate potential gaps in coverage and otherwise applicable LEPs resulting from eligible individuals' inability to submit a timely enrollment request as a result of emergency or disaster.

The proposed parameters of this SEP were as follows:

- At new §§ 406.27(b) and 407.23(b), we proposed to create an SEP for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by either a Federal, State, or local government.
- At new §§ 406.27(b)(1) and 407.23(b)(1), we proposed that the SEP would be available to those who were not able to enroll in premium Part A or Part B or both if they reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual must demonstrate that they reside (or resided) in the area during the period covered by that declaration.
- At §§ 406.27(b)(2) and 407.23(b)(2), we proposed that the SEP would begin on the date an emergency or disaster is declared, or if different, the start date identified in the declaration, whichever is earlier, so long as the date is on or after January 1, 2023. The SEP ends 2 months after the declaration has been determined to have ended or revoked. If the declaration is extended, the SEP ends 2 months after the end date of any extensions. We specifically requested comments regarding whether we should limit the time frame of the SEP based on the type of emergency, or specify that the type of emergency must explicitly restrict an individual's ability to enroll.
- We proposed in §§ 406.27(b)(3) and 407.23(b)(3), according to the Secretary's authority under section 1838(g) of the Act to specify the coverage period for individuals enrolling during SEPs established under section 1837(m) of the Act, that the coverage period for individuals who enroll under this SEP would begin the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

We received the following comments on the SEP for Individuals Impacted by an Emergency or Disaster:

Comment: Commenters expressed strong and broad support for the establishment of this SEP. Commenters agree that this SEP would help mitigate disparities related to the access of healthcare for Medicare beneficiaries residing in areas impacted by disasters or emergencies. A few commenters suggested that the proposed duration of the SEP may not be enough time for individuals to recover from a disaster or emergency declaration has ended and one recommended the SEP extend a full year after the declaration has ended.

Response: We appreciate the overwhelming support for this proposed SEP and thank those that gave us feedback. The vast majority of commenters expressed support for the SEP's duration, as proposed. However, we did receive comments suggesting that we extend the duration of the SEP beyond 2 months after the end of the emergency or disaster declaration. Upon review, we have decided to extend the SEP duration in order to provide greater flexibility for potential Medicare beneficiaries. Individuals will have the full duration of the emergency plus an additional 6 months to contact SSA to enroll in Medicare under this SEP. As such, we are revising §§ 406.27(b)(2) and 407.23(b)(2) to specify that the SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration and the SEP ends 6 months after the declaration has been determined to have ended or revoked. If the declaration is extended, the SEP ends 6 months after the end date of any extensions.

Comment: A few commenters requested that CMS consider making the SEP applicable in situations where the individual may not live in an area impacted by a Federal, State or local government-declared disaster or emergency, but the person who makes healthcare decisions on behalf of that individual does, noting that it was consistent to what was allowed in Part C and Part D. Additionally, a commenter recommended that we ensure that moving forward the requirements related to this SEP remain equal across Medicare Parts A, B, C and D.

Response: We thank commenters for this insight. Currently, in regard to the Medicare Part C and D emergency or disaster SEP, if a person who assists in making health care decisions on behalf of a Medicare enrollee is impacted by a government-declared emergency or disaster, then the SEP would be available to the enrollee. We would note that Medicare enrollees in Parts C and D have the option to make enrollment decisions on what plans best suit their financial and health care needs on an annual basis, and they often rely on friends and family members with these decisions. In contrast, enrolling in Parts A and B is normally a one-time decision that does not include the same level of complexity as Parts C and D enrollments. However, we do believe allowing some flexibility to individuals who require assistance in Medicare Parts A and B is important. As such, we will be revising §§ 406.27(b)(1) and 407.23(b)(1) to specify that the SEP is

[6] Equitable relief (section 1837(h) of the Act) is the tool by which we correct or eliminate inequity to the individual when their Medicare enrollment rights are prejudiced because of the error, misrepresentation, or inaction of the federal government.

also available if the individual did not live in an area impacted by a Federal, State or local government-declared disaster or emergency, but the individual's authorized representative (as defined at 42 CFR 405.910), their legal guardian, or the person who makes healthcare decisions on behalf of that individual, did live in such an impacted area.

Comment: A commenter requested that we remove the requirement for the individual to submit proof of SSA office closings or mail disruptions, or provide proof that the emergency or disaster directly affected their ability to enroll in Medicare.

Response: We appreciate the feedback but would like to clarify that impacted beneficiaries are not required to provide proof of SSA office closings or disruptions in mail service due to a disaster or emergency for this SEP. The individual must have missed an enrollment period in order to qualify for this SEP; however, the individual does not have to provide documented proof that the disaster or emergency impacted their ability to enroll as SSA will already have this information. Individuals or their authorized representative need only to demonstrate that they reside (or resided) in the area during the period covered by a disaster or emergency declaration.

Comment: We solicited comments on whether we should limit the SEP timeframe based on the type of emergency or the explicit impact on the individual's ability to enroll. The majority of commenters believe such restriction would be harmful to individuals and administratively burdensome to the Social Security Administration, which is tasked with making enrollment determinations. Commenters believe it is extremely unlikely that anyone would intentionally delay Medicare enrollment in hopes of a tragedy. There also may be disasters or emergencies that do not impact an individual's ability to enroll in Medicare.

Response: We agree with commenters and appreciate their feedback. The purpose of this SEP is to provide an enrollment opportunity for individual's impacted by an exceptional condition that may have impeded their ability to enroll during another valid enrollment period and as such we will not make any changes to the SEP timeframe based on the type of disaster or emergency.

We appreciate the support and feedback received from commenters. As discussed, we will be finalizing this SEP as proposed with the following modifications. We will be revising §§ 406.27(b)(1) and 407.23(b)(1) to specify that the SEP is also available if the individual did not live in an area impacted by a Federal, State or local government-declared disaster or emergency, but the individual's authorized representative (as defined at 42 CFR 405.910), legal guardian (as outlined by SSA), or person who makes healthcare decisions on behalf of the individuals, did live in such an impacted area. In addition, we will be revising §§ 406.27(b)(2) and 407.23(b)(2) to extend the duration of the SEP from 2 months to 6 months after the end of the emergency or disaster declaration.

c. SEP for Health Plan or Employer Misrepresentation or Providing Incorrect Information

In order to provide relief to individuals who missed an enrollment period because of misrepresentation by or incorrect information from their employer or GHP, we proposed to create a new SEP at § 406.27(c) and at § 407.23(c) based on exceptional conditions. We proposed that this SEP would apply for individuals whose non-enrollment in premium Part A or Part B is unintentional, inadvertent, or erroneous and results from material misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, or any person authorized to act on behalf of the employer or GHP.

The proposed parameters of this SEP were as follows:

- At §§ 406.27(c)(1) and 407.23(c)(1) we proposed that an individual is eligible for such an SEP if they can demonstrate that he or she did not enroll in premium Part A or Part B during an enrollment period in which they were eligible based on information received from an employer or GHP, or any person authorized to act on such organization's behalf, and an employer, GHP or their representative materially misrepresented information or provided incorrect information relating to enrollment in premium Part A or Part B, so long as the misrepresentation or error occurred on or after January 1, 2023. We stated that to demonstrate material misrepresentation, an individual would be required to provide documentation of the relevant misrepresentation to SSA and that it must show that the information was provided on or after January 1, 2023, was directly from an employer, GHP or their representative prior to an enrollment period, and that the inaccuracy caused the individual not to enroll timely.
- At § 406.27(c)(2) and § 407.23(c)(2) we proposed that this SEP would begin the day the individual notifies SSA of the employer or GHP misrepresentation or incorrect information provided, so long as the misrepresentation or error occurred on or after January 1, 2023, and would end 2 months later.
- At §§ 406.27(c)(3) and 407.23(c)(3), we propose that the coverage period would begin the first day of the month following enrollment.

We received the following comments on the SEP for Health Plan or Employer Misrepresentation or Providing Incorrect Information:

Comment: Commenters expressed general support for this SEP. Commenters indicated that this SEP will help to cure what they perceive to be one of the most widespread and common enrollment pitfalls facing beneficiaries and will potentially eliminate gaps in coverage. Multiple commenters, while supporting the SEP, recommended that we lower the evidence requirement for the SEP due to erroneous information that may have been provided orally or in another form in which the beneficiary may not be able to provide tangible evidence.

Response: We acknowledge that employers and GHPs do not always communicate information in writing; therefore, it is reasonable to assume that individuals may not have tangible documentation to provide to SSA proving that they were misinformed by their employer or GHP. Not allowing an alternative type of documentation, other than written, would disadvantage beneficiaries who were misinformed through other communication methods. Upon review, we have decided to accept written attestation from the beneficiary when documented evidence from the employer or GHP is not available. We thank the commenters for their overall support, and agree with their assessment of the evidence requirement. We are modifying the regulations at §§ 406.27(c) and 407.23(c) to expressly permit the use of either documentation of misrepresentation or written attestation.

Comment: Many commenters, while supporting the SEP, recommended that we include non-employer insurance sources, such as insurance agents and individual policy sellers, as well as non-federal government entities and agents, including Medicaid, the Marketplace, and State Departments of Insurance or similar as trusted sources of information. Commenters also recommended to expand the definition of misinformation to include employer or health plan omission of information.

Response: Upon review, we agree that other non-employer insurance sources could be considered trusted sources of information. Agents and brokers of health plans could be considered as

extensions of an individual's health plan and play a critical role in informing individuals of their enrollment options. We have modified the language in the regulation text accordingly.

We are not adopting the suggested inclusion of non-federal government entities and agents, including Medicaid, the Marketplace, and State Departments of Insurance as trusted sources of information because this would substantially change the scope of this SEP. The purpose of this SEP is to provide relief to employees who have been misinformed by employers, GHPs, or agents or brokers of health plans. If another entity has misinformed the beneficiary, the individual may apply for relief under the SEP for Other Exceptional Conditions. Accordingly, we are revising §§ 406.27(c)(1)(i) and 407.23(c)(1)(i) to include brokers or agents of health plans as entities from whom the beneficiary may have received misinformation.

Comment: Multiple commenters recommended that CMS expand the definition of misinformation to include employer or health plan omission of relevant information. For example, a commenter stated that an employer or health plan failing to convey pertinent information could impact an individual's decision making and cause them to miss their Medicare enrollment period.

Response: While we understand that individuals need complete information about their options and responsibilities, the onus does not fall on the employer, GHP, or agents and brokers of health plans to provide any information that the individual requests. Information provided by these entities is often voluntary, as they are not legally obligated under the Medicare statute to provide any information to individuals related to Medicare enrollment. As such, we will not be revising this final rule to provide that omission of information can give support an SEP.

Comment: Several commenters discussed beneficiaries' confusion with the interaction of COBRA coverage and Medicare, including that COBRA is not creditable coverage in the same way employer-group coverage is for Medicare and that COBRA cannot pay primary coverage once a person becomes eligible for Medicare. A few commenters recommended that enrollment in COBRA or retiree coverage alone should be used as evidence of misinformation, and therefore an individual in this circumstance should be considered eligible for the SEP.

Response: While we understand that COBRA interaction with Medicare may be confusing, we are unable to make the assumption that enrollment in COBRA was caused by misinformation provided by an employer or group health plan. We cannot assume that the beneficiary did not deliberately choose to enroll in COBRA. As such, we do not consider this an exceptional condition and will not consider enrolling in COBRA alone as a basis for this SEP. If a beneficiary was erroneously instructed by an employer, group health plan, or agent and/or broker of the health plan to enroll in COBRA, they may provide the documented evidence or written attestation of the misinformation in order to qualify for the SEP. In addition, if there was another exceptional circumstance surrounding their enrollment in COBRA, they can apply for the SEP for other exceptional conditions.

Comment: A commenter suggested that we increase the SEP duration from 2 months to 6 months to allow the beneficiary time to gather evidence of the misinformation.

Response: We proposed that the SEP would end 2 months after the individual notified SSA of the misrepresentation and we believed this would be ample time since, in most cases, we assumed that the individual would enroll at the same time they identified the issue to SSA. However, upon review, we have decided to extend the SEP duration from 2 months to 6 months in order to provide greater flexibility for potential Medicare beneficiaries. In addition, we are modifying this SEP to allow for the acceptance of written attestation, which will allow an individual to provide evidence of misinformation even if they do not have or cannot find written evidence from their employer or health plan, it should not take longer than 6 months to satisfy the requirements of this SEP.

We appreciate the support and feedback received from commenters. As discussed, we will be finalizing this SEP as proposed with the following modifications:

- We are modifying §§ 406.27(c)(1) and 407.23(c)(1) to expressly permit the use of either documentation of misrepresentation or written attestation for this SEP.
- We are revising §§ 406.27(c)(1)(i) and 407.23(c)(1)(i) to include brokers or agents of health plans as entities that may have been a source of misinformation.
- We are revising §§ 406.27(c)(2) and 407.23(c)(2) to increase the SEP duration from 2 months to 6 months.

d. SEP for Formerly Incarcerated Individuals

Section 1862(a)(2) and (3) of the Act generally prohibits Medicare payment for otherwise covered services when the individual who is furnished the services is not obligated to pay for them (and no other person has a legal obligation to pay for them) and covered services that are paid for directly or indirectly by a governmental entity (other than under a health program under the Social Security Act). In implementing these provisions, CMS adopted a regulation that prohibits payment for otherwise covered services that are furnished while the recipient is in custody of penal authorities, as such individuals are provided healthcare through their penal institution. As a result, individuals who are enrolled in Medicare but who are in custody of penal authorities as described in 42 CFR 411.4(b) (here, ''incarcerated'' for brevity) are subject to a payment exclusion in Medicare so Medicare does not pay for items and services that might otherwise be paid under Parts A and B. Further, section 202(x)(1)(A) of the Act prohibits the payment of Old-age, Survivors, and Disability Insurance (OASDI) benefits to individuals who meet one of several criteria that relate to being incarcerated.[7] Therefore, if an individual turns 65 and qualifies for Medicare but is not yet receiving OASDI benefits because of section 202(x)(1) of the Act, that individual is not automatically enrolled in Medicare Part A. Further, an individual may elect not to enroll in Medicare while incarcerated to avoid having to pay out of pocket premiums only for Medicare to deny payment for services. Moreover, current law does not provide any special enrollment opportunities for formerly incarcerated individuals who miss a Medicare enrollment period while incarcerated. If these individuals do not enroll into Medicare because they are incarcerated, they may go months without health coverage upon their release.

To address the exceptional conditions that an individual faces upon release from incarceration and to ensure that formerly incarcerated individuals have access to health coverage under Medicare, we proposed. at §§ 406.27(d) and 407.23(d). an SEP for individuals who are released from incarceration on or after January 1, 2023. This SEP would

[7] Section 202(x)(1)(A) lists several conditions of being confined in a jail, prison, other penal institution or correctional facility, or in an institution at public expense for certain reasons specified in the statute, or in a specific status with regard to criminal prosecution. Here, we use the term ''incarceration'' for brevity.

allow those formerly incarcerated individuals to avoid potential gaps in coverage and late enrollment penalties.

The proposed parameters of this SEP were as follows:

- At §§ 406.27(d)(1) and 407.23(d)(1), we proposed that an individual would be eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in Medicare premium Part A or Part B during another enrollment period in which they were eligible to enroll while they were incarcerated. Further, there must be a record of release either through discharge documents or data available to SSA.
- At §§ 406.27(d)(2) and 407.23(d)(2), we proposed that this SEP would start the day of the individual's release from incarceration and end the last day of the 6th month after the month in which the individual is released from incarceration.
- At new §§ 406.27(d)(3) and 407.23(d)(3), we proposed that entitlement would begin the first day of the month after the month of enrollment, so long as it is after January 1, 2023.

We received the following comments on the SEP for Formerly Incarcerated Individuals:

Comment: Commenters including advocacy groups, individuals, and State penal institutions provided broad support for this SEP. These commenters indicated that it could help this population as increasing health services and coverage during reentry have been associated with lower rates of recidivism and improved outcomes around employment, housing, and family support. Multiple commenters, while supporting the SEP, recommended that the duration be extended from 6 months as navigating reentry can be timely and daunting for this population, many of whom may have physical or cognitive impairments and/or low literacy and health literacy. Commenters also cited the heightened risk of competing priorities such as economic and housing insecurity during the period following release from incarceration as the need for an increased SEP duration. Most commenters recommended extending the SEP to 12 months, and a commenter recommended that the SEP last for 2 years.

Response: We appreciate the support for this SEP and understand and agree with the commenters' belief that this population faces many challenges in establishing stable conditions and reintegrating themselves into society. Upon review, and based on the issues raised by the commenters, we are extending the SEP duration to 12 months. We believe encouraging individuals to reestablish healthcare coverage through Medicare is a vital part of successfully re-entering and reintegrating into the community after incarceration and that a 12-month timeframe provides sufficient time for a released individual to have OASDI benefits reinstated. Reinstating OASDI benefits is important, especially to this population, as they can then enroll or reenroll in Medicare and not have to pay out of pocket for Medicare premiums, but rather have their premiums deducted from their Social Security benefits. Not all formerly incarcerated individuals will delay enrollment or reenrollment into Medicare until after they have reinstated their OASDI benefits. However, for those who do, allowing 12 months to enroll or reenroll in Medicare after release from incarceration allows ample time for formerly incarcerated individuals to first have their OASDI benefits reinstated. CMS will conduct education and outreach efforts to inform stakeholders on this SEP and the importance of prioritizing enrollment into Medicare for this population.

Accordingly, we are revising the duration of this SEP at §§ 406.27(d)(2) and 407.23(d)(2) to reflect an SEP that starts the day of release from incarceration and concludes at the end of the 12th subsequent month. For example, if an incarcerated individual was released on January 14, 2023, their SEP would begin on January 14, 2023 and end on January 31, 2024.

Comment: Multiple comments recommended allowing for pre-release enrollment under this SEP in order to prevent against potential gaps in coverage for this population upon release from incarceration. Commenters calling for pre-release enrollment also cited the need for these individuals to receive assistance from the State or incarcerating entity in their enrollment.

Response: We appreciate the feedback from commenters and understand the importance, especially for this vulnerable population, to lessen any risk of gaps of coverage. Further, we understand many individuals of this population may have economic factors that prevent them from enrolling in Medicare prior to their OASDI benefits being reinstated, thus requiring them to pay out of pocket for Medicare premiums. With these considerations in mind, we considered different options to best reduce any gaps of coverage that an individual may face upon release from incarceration and that included either revising the duration of the SEP or revising the entitlement start date. We believe this issue can best be addressed by finalizing our proposal with modifications to allow eligible individuals to choose between 2 effective dates of coverage:

- Option 1: Individuals enrolling in this SEP will have a prospective entitlement to begin the first day of the month following the month of enrollment.
- Option 2: Individuals enrolling in this SEP can opt for a retroactive entitlement date so long as their enrollment is on or after January 1, 2023. If the application is filed within the first 6 months of the SEP, the effective date is retroactive to the date of their release from incarceration. If the application is filed in the last 6 months of the SEP, the coverage effective date is retroactive to 6 months after the date of release from incarceration. In addition, beneficiaries who opt for retroactive coverage must pay the premiums for that coverage and we note that installment billing plans are available for beneficiaries who cannot pay the lump sum of retroactive premiums. Beneficiaries would contact their local Social Security field office for help paying any retroactive premium arrearages.

We understand that this population of beneficiaries may face job insecurity and socio-economic barriers while reintegrating into their communities. If an individual opts for retroactive coverage, they would have to pay monthly premiums for those retroactive months of coverage. Some individuals may wish to delay Medicare enrollment until they have had their OASDI benefits reinstated, ensuring they are not paying out of pocket for Medicare premiums. Still others may be willing to pay out of pocket for coverage retroactive to their release date, not to exceed 6 months, and before their OASDI benefits are reinstated. Providing individuals this option allows them the ability to make the healthcare decisions that are best suited to their needs. To implement this change, we are revising the entitlement date of this SEP at §§ 406.27(d)(3) and § 407.23(d)(3) to provide that entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023 or, as we specify in §§ 416.27(d)(3)(ii) and § 407.23(d)(3)(ii), individuals have the option of choosing an entitlement date retroactive to the first day of the month of their release from incarceration, not to exceed 6 months. Individuals would have to pay premiums for the retroactive period of coverage.

Comment: Multiple commenters suggested that CMS revise the

description of when someone is ''in custody of penal authorities'' under § 411.4(b). Commenters identified that the current definition includes a broad range of individuals—including those who are under arrest (pre-conviction), on medical furlough, required to live under home detention, or are on parole, probation, or supervised release. Further, the commenters noted that the regulation at § 411.4 does not absolutely preclude Medicare payment for these individuals; rather, it establishes the presumption that another payer is responsible, and provides that payment may be made for services furnished to individuals or groups of individuals who are in the custody of police or other penal authorities provided that certain conditions are met. However, commenters state the regulation assumes that penal authorities have responsibility to cover, and will cover, medical expenses during all these circumstances, an assumption that is inconsistent with actual coverage by corrections authorities.

Commenters expressed concern that the existing regulation could leave some individuals who are ''in custody of penal authorities'' as that phrase is used in § 411.4(b) without coverage from both the penal institution and Medicare. Commenters described their understanding that Medicaid coverage is permitted for individuals who are ''on parole, probation, or released to the community pending trial; living in a halfway house where individuals can exercise personal freedom; voluntarily living in a public institution; or on home confinement.''

Response: We thank the commenters for their concerns and suggestions. However, changes to § 411.4, such as to limit who is ''in custody'' for purposes of the Medicare payment exclusion or to amend the exception that permits Medicare payment under certain conditions, are not within the scope of this rulemaking. Further, we are not addressing here the rules and definitions used in other programs, such as Medicaid or the Marketplace, for individuals who are incarcerated or in custody.

We believe that it is important that the scope of the SEP we proposed and are finalizing is aligned with who § 411.4(b) specifies are individuals in custody of penal authorities for purposes of the Medicare payment exclusion. However, we appreciate the commenters' considerations and will continue to consider the issues they have raised. As finalized in this rule, §§ 406.27(d) and 407.23(d) use the term ''in custody of penal authorities'' and cite § 411.4(b) for its description of who is in custody of penal authorities to ensure this alignment is clear. As stated in the first paragraph for this section of this final rule, we are using the term ''incarcerated'' in the preamble to describe the individuals who are in custody of penal authorities as described in § 411.4(b). Further, if CMS amends § 411.4(b) in the future to limit the description of who is in custody of penal authorities for purpose of the Medicare payment exclusion, this SEP will be automatically aligned to that change.

Comment: Multiple commenters requested that CMS remove the overdue part B premiums (caused by the 90-day grace period) for incarcerated individuals. Currently, Medicare beneficiaries in a direct-bill agreement (for those who do not have Medicare premiums deducted from their OASDI benefits, a direct-bill agreement is an automatic deduction of Medicare premiums from a checking or savings account each month) are given 90 days to repay any past due premiums before their Medicare enrollment is terminated. After 90 days, Part B enrollment is normally terminated for non-payment of premiums (42 CFR 408.8(c)). Commenters noted this 90-day grace period places an unnecessary and unforeseen financial burden on people who are incarcerated but have not paid prior premiums and creates an additional barrier to reenrollment. The commenters explained this is because most enrolled beneficiaries have Medicare premium payments automatically deducted from a monthly SSA benefit. However, when the enrolled beneficiaries become incarcerated, they are switched to direct payment as their SSA benefits are suspended upon incarceration. If the individual later re-enrolls in Part B after release from incarceration, and upon restoring SSA benefits, SSA deducts premium payments owed under the earlier grace period from the first SSA benefit payment. Commenters noted this deduction can cause significant hardship upon reentry.

Response: We thank commenters for their concerns and suggestions. However, this suggestion is outside the scope of this rulemaking. The Medicare premium grace period is designed to help Medicare beneficiaries who are enrolled in direct pay keep coverage during temporary periods of hardship, or common mishaps that may result in a beneficiary missing a premium payment. Further, incarcerated individuals do have the ability to voluntarily terminate their Medicare coverage upon incarceration to avoid any potential past-due payment issues, which they would do by contacting SSA. Finally, installment billing plans are available through SSA for those who might have trouble repaying back due premiums.

Comment: A commenter requested that CMS use its discretionary authority to revise previous rules and waive all historic LEPs that were paid in the past or are being paid now by previously incarcerated individuals.

Response: By referring to ''historic LEPs,'' we believe the commenter is referring to LEPs that were assessed—and were paid in the past and/or are currently being paid for current Medicare coverage—in connection with coverage periods for individuals who enrolled (or reenrolled) in Part B after ending a period of incarceration before January 1, 2023. This suggestion is outside the scope of this rulemaking, and CMS does not have the authority to unilaterally waive LEPs that were paid in the past or are currently part of an individual's Medicare premium(s) as the LEPs are governed by statute. The Part A LEP is found in the statute at 1818(c)(6) of the Act, and the Part B LEP at 1839(b) of the Act. Section 120(a)(2)(C)(ii) of the CAA modified section 1839(b) of the Act to provide that individuals who enroll during an SEP established under the Secretary's authority under new section 1837(m) of the Act are not subject to the LEP, but it did not provide for a waiver of all historic LEPs for individuals who previously enrolled in Medicare under a condition that now would be considered an exceptional condition or for individuals who may qualify for but do not use an SEP that is established under section 1837(m) of the Act. Therefore, we are unable to waive historic LEPs for individuals who enrolled prior to January 1, 2023, even if that prior enrollment had been under circumstances that will be part of the new SEPs being adopted under section 1837(m) of the Act. Beginning January 1, 2023, an individual who enrolls using one of the SEPs adopted under section 1837(m) of the Act will not be assessed LEPs for the coverage period that begins with that SEP enrollment.

Comment: Multiple commenters recommended that CMS provide education to individuals who may be eligible for this SEP prior to their release from incarceration. Commenters showed concern over this population navigating the Medicare enrollment process and lacking the community resources that non-incarcerated people may have. Further, commenters noted that it would be unlikely that incarcerated individuals would receive any information through the mail about their

IEP, GEP, or any other helpful Medicare literature, therefore causing Medicare enrollment to be a daunting, unfamiliar process. Commenters also recommended that CMS provide notification of this SEP to eligible individuals to ensure that formerly incarcerated individuals can benefit from this SEP.

Response: We thank the commenters for their concerns and suggestions. As a part of implementing this final rule, we will be updating CMS publications, websites, and outreach materials. We also intend to work with stakeholders (for example, SHIPs, beneficiary advocacy groups, etc.) to raise awareness and understanding of all of the new SEPs.

We appreciate the support and feedback received from commenters on this SEP. Based on feedback from commenters, we will be finalizing this SEP as proposed with the following modifications:

- We will be extending the SEP duration and revise §§ 406.27(d)(2) and 407.23(d)(2) to reflect that the SEP starts the day of the individual's release from incarceration and ends the last day of the 12th month after the individual is released from incarceration.
- We are revising the text of the regulations at §§ 406.27(d) and 407.23(d) to use the phrase ''in custody of penal authorities'' as well as citing to § 411.4(b) in order to be clear that the scope of this new SEP is aligned with the scope of § 411.4(b). This change in terminology is intended to eliminate any unintended ambiguity that using different terms in these regulations could produce.
- We are revising the entitlement date of this SEP at §§ 406.27(d)(3) and 407.23(d)(3) to provide that entitlement begins the first day of the month following the month of enrollment. Individuals also have the option of choosing an entitlement date retroactive to the first day of the month of their release from incarceration (not to exceed 6 months).

e. SEP To Coordinate With Termination of Medicaid Coverage

Many beneficiaries are already enrolled in Medicaid when they initially qualify for Medicare at age 65, or if they are under age 65, after receiving 24 months of Social Security Disability Insurance (SSDI). While some of these individuals retain Medicaid coverage after becoming eligible for Medicare, others lose Medicaid benefits and/or eligibility entirely. For example, when an individual enrolled in the adult group under section 1902(a)(10)(A)(i)(VIII) of the Act and 42 CFR 435.119 becomes eligible for Medicare, they become ineligible for the Medicaid adult group per § 435.119(b)(3).[8]

Unless such individuals are eligible for Medicaid on another basis, such as based on receiving supplemental security income (SSI), they will no longer be eligible for Medicaid. Many such individuals qualify for another Medicaid eligibility group, such as a Medicare Savings Program (MSP) group, but others lose Medicaid coverage entirely because they do not qualify for another Medicaid eligibility group.

Low-income Medicare beneficiaries experience poorer health outcomes than their higher-income counterparts.[9] Based on program experience and reports from stakeholders, we are aware that some individuals who lose all Medicaid coverage after newly qualifying for Medicare may experience confusion and administrative barriers that undermine a seamless transition from Medicaid to Medicare coverage, risking a period of time without health insurance and a possible LEP for these at-risk individuals.

Current Medicaid rules attempt to facilitate beneficiary transitions between Medicaid and other health coverage programs before the beneficiary loses Medicaid coverage. On September 7, 2022, the **Federal Register** included a notice of proposed CMS rulemaking entitled ''*Streamlining the Medicaid, Children's Health Insurance Program, and Basic Health Program Application, Eligibility Determination, Enrollment, and Renewal Processes*'' that aims to improve continuity of health coverage; however, for purposes of this rulemaking CMS refers only to current regulations. Before terminating or reducing the scope of Medicaid coverage for individuals who become eligible for Medicare, the State Medicaid agency must conduct a redetermination of eligibility, including a determination of whether the individual is eligible for Medicaid on another basis under §§ 435.916(d), 435.916(f)(1) and 435.930(b). The State must continue the same level of Medicaid coverage until the State completes the eligibility redetermination and provides at least 10 days of advance notice and fair hearing rights in accordance with § 435.917 and 42 CFR part 431 subpart E. If, during the redetermination process, an individual is found to no longer be eligible for the eligibility group under which they had been most recently receiving coverage, the State must then: (1) move the individual to a different eligibility group for which the individual is eligible or, (2) in instances in which the individual is not eligible for another Medicaid eligibility group, determine the individual's potential eligibility for other insurance affordability programs, in accordance with § 435.916(f)(2), and terminate the individual's Medicaid coverage.

In the proposed rule (87 FR 25098), we noted that, despite these requirements, there are multiple scenarios that can prevent a seamless transition to Medicare coverage. We explained that States sometimes fail to complete redeterminations timely, sometimes not until months after the individual first qualifies for Medicare.[10] When this happens, an individual may retain Medicaid even though the individual no longer technically meets the Medicaid eligibility criteria. State Health Insurance Assistance Programs (SHIPs) and beneficiary advocacy groups have reported that such individuals sometimes miss their IEP because they continue to be covered by Medicaid and assume it is not necessary for them to sign up for potentially duplicative health coverage. Moreover, many States do not cover the Part B premiums for individuals remaining in the adult group pending a redetermination under their buy-in agreement.[11] Because individuals in

[8] To date, 39 States have chosen to cover the adult group under § 435.119 (b). The adult group has an income limit of 133 percent of the FPL, but a basic standard deduction of 5 percent of the FPL is applicable as described in section 6012(a)(1) of the Internal Revenue Service Code. (See 42 CFR 434.603(e).

[9] For information about the health outcomes of low-income Medicare beneficiaries, see HHS Office of the Assistant Secretary for Planning and Evaluation (2016, December). *Social Risk Factors and Performance Under Medicare's Value-Based Purchasing Programs. https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//171041/ASPESESRTCfull.pdf.*

[10] Recent HHS Office of Inspector General reports and State audits have cited cases in which States continued to provide coverage for many months after a change impacting eligibility was identified that should have prompted a redetermination. See for example: Louisiana Legislative Auditor. (2018, November 8). *Medicaid Eligibility: Wage Verification Process of the Expansion Population. https://www.lla.la.gov/PublicReports.nsf/1CDD30D9C828608286258340065E5F6/$FILE/0001ABC3.pdf; Colorado Did Not Correctly Determine Medicaid Eligibility for Some Newly Enrolled Beneficiaries. https://oig.hhs.gov/oas/reports/region7/71604228.pdf;* HHS Office of the Inspector General. (2019b, August). *California Made Medicaid Payments on Behalf of Newly Eligible Beneficiaries Who Did Not Meet Federal and State Requirements. https://oig.hhs.gov/oas/reports/region9/91602023.pdf;* HHS Office of the Inspector General. (2018, February). *New York Did Not Correctly Determine Medicaid Eligibility for Some Non-Newly Eligible Beneficiaries. https://oig.hhs.gov/oas/reports/region2/21601005.pdf;* HHS Office of the Inspector General. (2019, July).

[11] Under their buy-in agreements with CMS, some States are required to enroll all Medicaid

Continued

such States would need to pay the Part B premium themselves, they may decline to sign up for Medicare coverage, which they may struggle to afford.

During the ongoing Public Health Emergency in response to the Coronavirus Disease 2019 outbreak (COVID–19 PHE), as a condition of receiving the federal medical assistance percentage (FMAP) increase authorized by the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127), States claiming the FMAP increase have been required to maintain Medicaid enrollment for nearly all individuals enrolled in Medicaid as of March 18, 2020, through the end of the month in which the COVID–19 PHE ends. This condition, known as the continuous enrollment requirement or continuous enrollment condition, applies to, among others, individuals who qualified for or were enrolled in Medicaid during this time period in the adult group and subsequently became eligible for Medicare.

As discussed in the proposed rule (87 FR 25099), since the start of the COVID–19 PHE, beneficiary advocacy groups and SHIPs have reported to us that a substantial number of beneficiaries who became eligible for Medicare while enrolled in the Medicaid adult group may have interpreted States' notifications that their Medicaid coverage would remain intact throughout the COVID–19 PHE (and the ensuing months of continuous coverage after they qualified for Medicare) to mean they did not need to take any action during the COVID–19 PHE to secure or maintain health coverage, including enrolling in Medicare. Consequently, we anticipated that some beneficiaries who maintained adult group eligibility are likely to have missed their IEPs as a result of confusion based on the COVID–19 PHE. Based on these reports, we indicated concern that when the COVID–19 PHE ends and states resume routine eligibility and enrollment operations for Medicaid, including taking action on pending redeterminations necessitated by changes in beneficiary circumstances, such individuals would end up being terminated from Medicaid and would experience a gap in coverage and lose access to critical health care as a result. Further, we explained that once they do enroll in Medicare, they could incur late enrollment penalties.

As mentioned previously, under an existing requirement under the Medicaid program designed to maximize continuity of coverage for beneficiaries whom States have determined ineligible for Medicaid, States must determine or assess their potential eligibility for other insurance affordability programs, such as the Children's Health Insurance Program (CHIP) and health insurance coverage available on the Marketplace with financial assistance and transfer their accounts to such programs as appropriate under §§ 435.916(f)(2) and 435.1200(e). As discussed in the proposed rule (87 FR 25099), although insurance affordability programs have not been defined to include Medicare, promoting a seamless transition from Medicaid to Medicare coverage is also very important. The ability to enroll in Medicare can be vital in preventing gaps in health coverage, especially if individuals lack access to other health insurance and may be subject to an LEP when they do enroll in Medicare.

To remove barriers that present an exceptional condition that could prevent individuals from transitioning from coverage under the Medicaid program to coverage under the Medicare program, we proposed an SEP at §§ 406.27(e) and 407.23(e) for individuals who lose Medicaid eligibility entirely after the COVID–19 PHE ends or on or after January 1, 2023 (whichever is earlier) and have missed a Medicare enrollment period. We anticipated our proposals would advance health equity by improving low-income individuals' access to continuous, affordable health coverage and use of needed health care consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and the *Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage.*

We proposed at §§ 406.27(e)(1) and 407.23(e)(1) that to be eligible for this SEP, an individual must demonstrate they are eligible for Medicare and their Medicaid eligibility is terminated on or after January 1, 2023, or is terminated after the last day of the COVID–19 PHE as determined by the Secretary, whichever is earlier. At §§ 406.27(e)(2)(i) and 407.23(e)(2)(i), we proposed that if the termination of Medicaid eligibility occurs after the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023. At §§ 406.27(e)(2)(ii) and 407.23(e)(2)(ii), we proposed that if the termination of Medicaid eligibility occurs on or after January 1, 2023, the SEP starts when the beneficiary receives notice of an upcoming termination of Medicaid eligibility and ends 6 months after the termination of eligibility. We anticipated that this extended duration would allow this at-risk population sufficient opportunity to enroll in Medicare.

We also noted that, unlike the other proposed SEPs for exceptional conditions, this SEP could apply to a circumstance that occurs before January 1, 2023 (that is, if the end of the COVID–19 PHE and the individual's Medicaid termination occur before such time). We maintained that such a deviation was warranted in this limited circumstance given the novel COVID–19 outbreak and unprecedented Federal, State, and local efforts to combat it.

We proposed at §§ 406.27(e)(3) and 407.23(e)(3) that entitlement to Part A and Part B, respectively, would begin the first day of the month following the month of enrollment, so long as it is effective after the end of the COVID–19 PHE or January 1, 2023, whichever is earlier. We noted that individuals whose Medicaid eligibility is terminated after the end of the COVD–19 PHE, but before January 1, 2023 (if applicable), have the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage.

Lastly, we proposed at §§ 406.27(e)(4) and 407.23(e)(4) that individuals who otherwise would be eligible for this SEP, but enrolled in Medicare during the COVID–19 PHE prior to January 1, 2023, if applicable, are eligible to have LEPs collected under §§ 406.32(d) or 408.22 reimbursed and ongoing penalties removed. Given the unique nature of this specific SEP, and the fact that we proposed that individuals could be eligible for the SEP if the COVID–19 PHE ends before January 1, 2023, we concluded that it is appropriate and fair that these individuals not be subject to an LEP that would not have been collected had they known about this remedy at the time of enrollment.

We received the following comments, and our responses follow.

Comment: Several commenters expressed general support for the SEP to Coordinate with Termination of Medicaid Coverage (Medicaid SEP) as

beneficiaries in Medicare Part B and to pay the premiums on their behalf (known as ''Part B buy-in''). If such a State has not completed the eligibility redetermination for an individual enrolled in the adult group before the first month they qualify for Medicare, the State must enroll the individual in Part B buy-in for all months in which the individual is enrolled in the adult group. CMS Manual for the State Payment of Medicare Premiums, chapter 1, section 1.4, *https://www.cms.gov/files/document/chapter-1-program-overview-and-policy.pdf.* See section II.D.3.e. of this proposed rule for a discussion of buy-in coverage groups available for Part B.

proposed. Some commenters were particularly appreciative of the reimbursement of the LEPs for individuals who would have been eligible for the Medicaid SEP, but already enrolled in Medicare.

Response: We appreciate the comments in support of our proposal. We anticipate this proposal will help support continuous coverage for individuals as they transition from Medicaid to Medicare coverage after the COVID–19 PHE ends and beyond.

Comment: A few comments sought to further address potential gaps in coverage during the transition from Medicaid to Medicare coverage. A commenter recommended that we require States to continue Medicaid enrollment until the individual is actually enrolled in Medicare.

Response: We lack the statutory authority to require that Medicaid enrollment continue for individuals who are ineligible for Medicaid beyond the end of the COVID–19 PHE and until the individual is actually enrolled in Medicare. Beginning the month following the month in which the COVID–19 PHE has ended, individuals who are ineligible for Medicaid may not remain enrolled in Medicaid after the State makes a redetermination that they are ineligible for such coverage.[12] Therefore, we are unable to accept the commenter's recommendation.

However, we share the commenters' concerns about gaps in health coverage as individuals transition from Medicaid to Medicare health coverage. Under the proposal, the effective date of the Medicare enrollment is the month following the month of the SEP enrollment. Therefore, if individuals do not apply for this SEP upon receipt of the Medicaid termination notice, they would likely have a gap in coverage before Medicare coverage starts. Any delay in applying for this SEP after the loss of Medicaid coverage could be particularly harmful for people who may need to seek medical care in the intervening time. As such, to address the commenters' concerns and reduce gaps in coverage for individuals transitioning between Medicaid and Medicare coverage, we are finalizing revisions to § 406.27(e)(3) to add paragraph (iii) and § 407.27(e)(3) to add paragraph (iii) to allow individuals the option to elect retroactive Medicare entitlement back to the date of Medicaid termination but no earlier than January 1, 2023. If an individual selects this option, they must pay the premiums for the retroactive covered time period.

Comment: A few commenters requested clarification on whether individuals who are only entitled to Part A if they pay a premium (premium Part A) and live in group payer States can use this SEP to enroll in premium Part A for the purposes of enrolling in the Qualified Medicare Beneficiary (QMB) eligibility group.

Response: Under proposed § 406.27(e), individuals who are entitled to premium Part A, have missed their initial Medicare enrollment, and lose all Medicaid eligibility have access to this SEP. We do not make a distinction between access to this SEP for individuals who live in States that have elected to extend their buy-in agreement to include Medicare Part A (Part A buy-in States) and those that did not (group payer States).[13] As such, individuals who are entitled to Part A and live in a group payer State may also use this SEP to enroll in premium Part A under existing SSA processes.

Comment: A few commenters expressed concern regarding the type of notice that would be required before an individual is able to use the SEP. The commenters expressed concern that individuals may not receive timely Medicaid termination notices because of recent relocations, homelessness, and/or mail delivery problems. The commenters suggested these problems may be magnified by the end of the COVID–19 PHE. As such, commenters suggested that CMS use actual knowledge of the Medicaid termination as the standard for when the Medicaid SEP time period should start. A commenter requested that CMS and SSA use existing data resources to automatically apply these SEPs for individuals who are able to provide basic documentation with their enrollment materials.

Response: We share commenters' concerns about timely receipt of a State Medicaid termination notice and reducing barriers to qualifying for this SEP, but we decline to change the notice standard for the SEP to actual notice of termination. We think such a change would be problematic to operationalize because it would be very difficult to verify when any particular individual had actual knowledge of termination of their Medicaid coverage. This modification could also result in delaying the SEP until many months after the individual lost Medicaid coverage, which would undermine the goal of smooth transitions of coverage between the Medicaid and Medicare programs. However, if the individual lacks the original State termination notice, SSA will use alternative processes to verify the loss of Medicaid with the State Medicaid agency (for example, email and telephone contact).

In addition, to prepare for the unwinding of the COVID–19 PHE, we have urged individuals to update their contact information with States at *https://www.medicaid.gov/resources-for-states/coronavirus-disease-2019-covid-19/unwinding-and-returning-regular-operations-after-covid-19/renew-your-medicaid-or-chip-coverage/index.html.* We have also created a list of best practices for State Medicaid agencies as they prepare to unwind the COVID–19 PHE, which includes strategies to collect and verify updated enrollee contact information at *https://www.medicaid.gov/resources-for-states/downloads/state-unwinding-best-practices.pdf.* These principles and practices have been emphasized throughout CMS materials related to unwinding, which can be found at *https://www.medicaid.gov/unwinding.* We encourage the commenters to partner with us to help ensure State Medicaid agencies have updated contact information for beneficiaries.

We appreciate the suggestion to ease processes for beneficiaries but we are unable to automatically apply the Medicaid SEP for individuals who try to enroll in Medicare at the end of the COVID–19 PHE. While some individuals in Medicaid who are eligible for Medicare will lose eligibility for Medicaid upon the end of the COVID–19 PHE, others will not. Some individuals will transition to an MSP eligibility group or another eligibility group that is part of the State's buy-in group. Therefore, we decline to adopt the commenter's recommendation to automatically apply this SEP to eligible individuals at this time, but may consider options to streamline processes in future rulemaking based on program experience.

Comment: Some commenters stated that our proposal to require Medicaid termination as the trigger for the SEP would complicate processes for individuals who missed their IEP during the PHE but who remain eligible for Medicaid after the PHE ends and redeterminations resume. The commenters stated, for example, that in a State that requires Medicare application as a condition of Medicaid eligibility, individuals who are otherwise eligible for Medicaid but failed to enroll in Medicare timely would only be able to qualify for the

[12] The continuous enrollment provision in the FFCRA provides an exception to this rule, but it is limited to the COVID–19 PHE.

[13] For more information about the distinction between a Part A buy-in State and group payer State, please refer to section II.D.1. of this final rule.

SEP if the State terminates their Medicaid eligibility for failing to enroll in Medicare. However, once the individual enrolls in Medicare using the SEP, they would then need to re-apply for Medicaid to regain Medicaid coverage. The commenters therefore requested that CMS consider allowing individuals who missed their IEP to qualify for the SEP without being terminated from Medicaid.

Response: We share the commenters' goal of avoiding administrative complications for individuals and States, but we decline to extend this SEP to individuals who missed their IEP but have not had their Medicaid coverage terminated. At the outset, as noted at 87 FR 25100, individuals who continue to qualify for a Medicaid eligibility group that is included in the State buy-in agreement would not need to use this SEP, as the State would already enroll them in Medicare without regard to Medicare enrollment periods and LEPs.

However, individuals who missed their IEP and remain eligible for a Medicaid group that is *not* in the buy-in agreement could not enroll in Medicare outside of enrollment periods using the proposed SEP. While this group could benefit from the commenters' suggestion, we would need to further explore the policy and operational considerations of broadening the eligibility for this SEP (for example, how to effectively identify the specific affected population) and would benefit from additional public input and program experience. Lastly, we note that individuals who are ineligible for this SEP may still qualify for an SEP on a case-by-case basis for other unanticipated situations that involve exceptional conditions that occur on or after January 1, 2023 at new §§ 406.27(f) and 407.27(f).

Finally, we would like to clarify CMS policy on requiring Medicare as a condition of Medicaid eligibility. As described in the buy-in provisions in the proposed rule at 87 FR 25120, States can require Medicaid applicants and beneficiaries to apply for Medicare as a condition of eligibility, only provided that the State pays their Medicare premiums under the State buy-in agreement. If the State does not pay the Medicare premiums for a Medicaid beneficiary under State buy-in and they do not enroll in Medicare, the State cannot terminate the individual for failing to apply for Medicare.

Comment: Another commenter sought clarification on how the SEP would apply to individuals who failed to timely enroll in Medicare because they remained enrolled in adult group coverage during the PHE and are then enrolled in Medicaid with a spenddown amount after normal operations resume. These individuals have countable income over the eligibility limit for Medicaid and must deduct their incurred medical expenses to reduce their income down to the medically needy income level (''spenddown amount'') in order to be eligible for Medicaid in a given period. The commenter inquired whether individuals with a spenddown amount are eligible for this SEP, particularly if they do not meet their spenddown amount during a given period either because their medical expenses have dipped or they did not submit the necessary paperwork to prove they have met their spenddown amount.

Response: We acknowledge the difficulties and variability of Medicaid eligibility for individuals who must meet a spenddown to qualify for Medicaid. We clarify that the proposed SEP would not apply to individuals who apply for Medicare when they have already met their spenddown amount because they are still eligible for Medicaid. On the other hand, the SEP would apply to individuals if they fail to meet their spenddown amount in a given period and apply using the SEP while their Medicaid coverage is not in effect. We will welcome feedback on experiences with this SEP among individuals who must meet a spenddown to qualify for Medicaid to inform future rulemaking.

Comment: A commenter sought clarification on whether certain individuals would qualify for the proposed SEP. In particular, the commenter questioned whether the SEP applies to individuals who missed a Medicare enrollment period before the COVID–19 PHE began. The commenter also inquired whether individuals can qualify for the SEP if they voluntarily withdraw from Medicaid before the end of the COVID–19 PHE. Finally, the commenter requested we explain if States or an individual can request exceptions to the parameters of the proposed SEP.

Response: We appreciate the commenter's questions. Under §§ 406.27(e)(1)(ii) and 407.27(e)(i)(ii), the SEP is available to individuals who have missed a Medicare enrollment period and whose Medicaid eligibility is terminated on or after January 1, 2023 or is terminated after the last day of the COVID–19 PHE, whichever is earlier. We did not specify when an individual must have missed a Medicare enrollment period. Therefore, in the commenter's first example, an individual who missed a Medicare enrollment period prior to start of the COVID–19 PHE (for example, January 31, 2020) and meets other applicable requirements under §§ 406.27(e) and 407.27(e) would qualify for the SEP.

In response to the commenter's question about voluntary withdrawals, we note at the outset that voluntary terminations from Medicaid are exceedingly rare and, as such, we do not expect the issue the commenter raised to occur with any frequency. Nonetheless, we clarify that this SEP would not apply to individuals who were determined ineligible for Medicaid but kept enrolled due to the continuous coverage enrollment provision in the FFCRA and who voluntarily withdraw from Medicaid before the PHE ended (or individuals who give up Medicaid coverage on or after January 1, 2023). The rationale for this SEP was predicated on ensuring smooth transitions between the Medicaid and Medicare programs, trying to remedy the gaps in coverage that are created through involuntary delayed terminations of Medicaid and the challenges of navigating different States' processes with regard to redeterminations. It is our understanding that individuals who voluntarily terminate their Medicaid coverage would not experience the same gaps in health coverage that individuals facing involuntary terminations experience. Based on program experience, individuals who give up Medicaid coverage tend to have other available sources of health coverage. Additionally, individuals who voluntarily terminate Medicaid coverage do not have the same challenges with States' processes that individuals who are involuntarily terminated from Medicaid experience.

Finally, we did not propose an option for individuals or States to request an exception to the parameters of this proposed SEP. However, as noted previously, individuals who are ineligible for this SEP may still qualify for an SEP on a case-by-case basis for other unanticipated situations that involve exceptional conditions that occur on or after January 1, 2023 at new §§ 406.27(f) and 407.27(f). After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal with a modification to our proposed SEP at §§ 406.27(e) and 407.27(e) to allow retroactive entitlement to the date of termination of Medicaid coverage but no earlier than January 1, 2023.

f. SEP for Other Exceptional Conditions

We also proposed to retain the ability to provide SEPs on a case-by-case basis for other unanticipated situations that involve exceptional conditions and warrant an SEP. This SEP would allow us to grant SEPs on a case-by-case basis for circumstances we do not have enough experience to consider or anticipate that could create a barrier to enrollment. We acknowledge that there is no way to predict the full range of circumstances that would warrant an SEP—they are ''exceptional''—so we need this SEP for exceptional conditions to be timely in our response to beneficiaries with unique cases, given the time it takes to establish a more targeted SEP via rulemaking.

The proposed parameters of this SEP were as follows:

- At §§ 406.27(f) and 407.23(f), we proposed to create an SEP that would provide an enrollment opportunity for individuals where conditions beyond their control caused them to miss an enrollment period and prevented them from timely enrolling in premium Part A or Part B or both during the IEP, GEP or other prescribed SEPs.
- At §§ 406.27(f)(1) and 407.23(f)(1), we proposed that such SEPs would be granted on or after January 1, 2023, if the individual demonstrates that conditions outside of their control caused them to miss an enrollment period and the condition was determined exceptional in nature.
- At §§ 406.27(f)(2) and 407.23(f)(2), we proposed that the SEP duration would be determined on a case-by-case basis
- At §§ 406.27(f)(3) and 407.23(f)(3), we proposed that entitlement would begin the first day of the month following the month of enrollment, and only for exceptional conditions that arise on or after January 1, 2023.

We received the following comments on the SEP for Other Exceptional Conditions:

Comment: Commenters expressed incredible support for the case-by-case SEP, and many commenters included suggestions to establish new, separate SEPs along with those discussed in the proposed regulation. For example, some commenters urged us to expand this SEP to include certain socio-demographic groups. Notably, a few commenters expressed support and suggested a separate SEP for immigrants who have passed the 5-year requirement, but are under the impression that they need to wait until citizenship before they can enroll in Medicare. This misinterpretation inadvertently causes them to miss their IEP. The commenter detailed that the underlying issue is a misunderstanding of eligibility for Medicare for immigrants and a lack of notice, hence the need for a new SEP instead of individual equitable relief.

Similarly, another commenter urged CMS to grant a new SEP, or waive the LEP, to eligible American Indian and Alaska Native individuals if they inadvertently miss their IEP due to the complicated nature of the Indian health care delivery system. They cited that such an opportunity would fall in line with the agency's commitment to improving the health of this population and eliminate barriers to enrollment and coverage.

Response: We acknowledge and appreciate all comments received. Under §§ 406.20(b)(2)(ii) and §§ 407.10(a)(2)(iii), immigrants over age 65 can qualify for, and enroll in, premium Medicare Part A and Part B after 5 continuous years of legal residency in the United States. Individuals who identify as American Indian and Alaska Native are able to seek and receive care through the Indian Health Service (IHS). Because the IHS works closely, and often in tandem with CMS, Medicare coverage information is readily provided to entitled beneficiaries who interact with the system.

With this understanding, we believe there are avenues through which individuals within these populations can receive adequate and accurate information about Medicare eligibility and enrollment. While we are sensitive to the conditions presented, we do not see a need to revise our regulations or establish a new, separate specific SEP for these groups as it is not clear to CMS that they meet the definition as exceptional conditions and we do not have evidence that the potential exceptional conditions impact a broad enough group of individuals to necessitate the establishment of a specific SEP. An individual who can present documentation to SSA that an exceptional condition that was outside their control prevented that individual from enrolling in Medicare may qualify for the Other Exceptional Conditions SEP on a case-by-case basis. CMS will work with SSA to monitor the use of the Other Exceptional Conditions SEP, and if a particular exceptional condition that impacts a broad number of individuals becomes apparent in that data analysis, we will consider adding additional specific SEPs in the future.

Ultimately, we remain committed to improving education and outreach efforts for these populations to remedy current misunderstandings, bridge knowledge gaps, and eliminate enrollment barriers. We will continue to partner with existing stakeholders to ensure that clear and comprehensive information is provided to beneficiaries so they are able to make an informed coverage choice in a timely manner. We will also continue to evaluate the data collected on the case-by-case exceptional conditions SEP to determine whether any issues arise that warrant the creation of a unique exceptional conditions SEP for these populations.

Comment: A few commenters mentioned the existing SEP for individuals serving as volunteers outside the U.S. at the time they first become eligible for Medicare who are participating in a program sponsored by a 501(c)(3) covering at least a year, and who demonstrate health insurance coverage while serving in the program. Consequently, they urged CMS to expand the existing SEP for those living abroad who have been covered by private or national insurance, in that country and wish to return to the U.S. and enroll in Medicare.

Response: We acknowledge and thank the commenters for their input. Under SSA publication No. EN–05–10137,[14] for an individual living abroad who may be eligible for Medicare, there are generally no restrictions from collecting Social Security benefits and enrolling in Medicare. This applies regardless of if they return to reside in the United States or not. Additionally, individuals who live abroad are able to still pay their premium, if required, and be enrolled in Medicare Part A or Part B during their IEP. Given that there are not any exceptional conditions that prevent these individuals from enrolling in Medicare, we do not believe that an expansion on the current SEP, or creation of a new, separate SEP is warranted under this circumstance. (We note that Medicare generally does not pay for services that are not furnished within the United States. See 42 CFR 411.9.)

Comment: Another commenter urged CMS to consider establishing an additional SEP for individuals who have relied on coverage from the Veterans Administration (VA). Specifically, they cited that after these individuals missed their IEP for Medicare and realized that the VA coverage no longer meets all of their needs, they want a new opportunity to enroll in Part B.

Response: Veterans, like all other Medicare beneficiaries, who receive Social Security benefits at the time they reach age 65 receive a notice about

[14] *https://www.ssa.gov/pubs/EN-05-10137.pdf.*

Medicare coverage, regardless of VA coverage. In addition, for those not collecting Social Security benefits at age 65, there are a number of resources available to those receiving VA health benefits that advise them to enroll in Medicare on their own, or if applicable, their spouse's record as described on pages 19 and 90 of the 2022 *Medicare and You Handbook* for additional information. The guidance also explains the resulting consequence for not filing, especially in situations where he or she is not eligible for premium-free Part A based on their own work record.

For these reasons, we do not concur with the need for a specific SEP for this population. We will continue to refine awareness and education efforts on eligibility and enrollment for this target population to help to eliminate barriers to timely enrollment.

Comment: Another commenter suggested that CMS create a permanent, separate SEP for individuals who were given erroneous information by an SSA or other federal employee. They note that, while equitable relief is typically available for such situations, SSA is not required to reply to these requests within a specific timeframe, therefore, causing beneficiaries to wait for months or initiate contact for a reply. The commenter also noted that there is no formal appeal process for a denied request.

Response: We thank the commenter for this insight, however, the SEP is not intended to replace equitable relief available under section 1837(h) of the Social Security Act and codified at 42 CFR 407.32. There are specific parameters for the exceptional conditions SEP, as outlined in the proposed rule, including that the reason for the SEP must be exceptional in nature, should not create incentive to delay enrollment in Medicare, and is the most appropriate resolution. The equitable relief process offers additional flexibility that goes beyond the parameters of the exceptional conditions SEP. By providing equitable relief, SSA has the ability to offer additional relief to enrollees such as retroactive coverage, waived premiums, or creation of an enrollment opportunity to essentially eliminate the effects of the government error and meet their coverage needs. Although SSA is not required to process equitable relief requests in a specific timeframe, they aim to process these requests within 30 days from the time it is assigned to a technician. Once the case is processed, the technician notifies the enrollee, in writing, to explain the type of relief granted or if the request for relief is denied. This timeline may be altered due to the need for SSA to solicit additional documentation or verify submitted documentation.

Finally, in response to the commenter's concern about the appeals process for equitable relief. We will continue to collaborate closely with SSA to be as transparent as possible with the equitable relief process, and that options to enroll in Medicare remain accessible.

Comment: A commenter recommended that CMS should consider implementing an SEP for individuals who lose Medicare coverage for failure to pay premiums such that it can only be used twice per beneficiary. They cited that this kind of SEP would avoid the cyclical re-enrollment process for individuals who are unable to pay their premiums.

Response: As discussed in the proposed rule, the scope of the exceptional conditions SEP is intended to provide a new enrollment opportunity and remove any penalties for late enrollment, not to provide premium relief. CMS does not consider non-payment of premiums for economic reasons as a primary justification for an exceptional condition, therefore, this would not fall under the new SEP umbrella. Non-payment of premiums could qualify though as a secondary outcome of a major event that could qualify as an exceptional condition. Further, when individuals do not enroll in Medicare in a timely manner, it puts them at risk for experiencing gaps in coverage and delays in needed health care treatment. Also, as stated in the proposed rule, if an individual is experiencing financial constraints, there are mechanisms in place (including State buy-in, MSP and premium payment plans) that would more appropriately provide support for affected individuals while ensuring continuity in their health care coverage. For these reasons, we will not be establishing a new, separate SEP for this condition.

Comment: A commenter recommended that SEPs be established in Medicare Parts C and D to coordinate with the enrollment period and effective date changes in this rule. They added that we also consider creating a new SEP for MA-only plans for those who enroll in Part B (and premium Part A) during the GEP.

Response: We appreciate the thought supporting this comment. The establishment of new SEPs for Medicare Parts C and D is outside the scope of this rule making.

Comment: Several commenters applauded our desire to use the information and experience gained from the flexibility of this newly established SEP to inform the creation of future SEPs. In their support, they also suggested that we and, to the extent relevant, the SSA track and report any trends or patterns in the use (and limitations) of these new SEPs.

Response: We appreciate the support and recommendation. We expect that the flexibility of this SEP will inform any changes that may be desirable in the future. In order to provide for additional flexibility, and reduce confusion, we are revising the duration of the SEP to establish a minimum time period. Specifically, we are revising §§ 406.27(f)(2) and 407.23(f)(2) to state that the SEP duration is determined on a case by case basis, but will be no less than 6 months.

We do plan to track trends and utilize the data from any frequently occurring situations to help guide discussions regarding the creation of new SEPs, which would be subject to further notice and comment rulemaking. In regards to publicly reporting these trends, we will consider in the future whether sharing data is appropriate and feasible given potential beneficiary privacy concerns.

Comment: A commenter from a health plan supported our proposals, but had some questions with regard to the logistical technicalities. Specifically, they wanted to know how we will designate the SEP reason codes and if they will be released as part of new CY 2023 guidance. Another commenter also questioned if we will be making the determinations around the exceptional conditions and how the process will work overall.

Response: We thank the commenters for their recommendations to clarify several factors of this new SEP. For Part C/D SEPs, health plans are required to submit reason codes to CMS, however, as the SEPs in this regulation are Medicare Part A/B SEPs, they will be submitted to, and determined by, SSA and SSA will code which SEP is used for enrollment. Health plans would have no role in this determination process. We will continue to work alongside SSA to clarify guidelines regarding the exceptional conditions.

We acknowledge and appreciate all of the feedback and supportive comments we received on the proposed SEP for other exceptional conditions. As discussed above, we will be finalizing this SEP with modifications at §§ 406.27(f)(2) and 407.23(f)(2) to state that the SEP duration is determined on a case-by-case-basis, but will be no less than 6 months.

3. Technical Correction to the Calculation of the Late Enrollment Penalty for Individuals Enrolling on or After January 1, 2023

Currently, section 1839(b) of the Act specifies that the LEP is based on the number of months that have elapsed between the close of the individual's IEP and the close of the enrollment period during which they enroll, plus certain additional months for individuals who reenroll. However, section 120(a)(3) of the CAA amended section 1839(b) of the Act to specify that, for enrollments on or after January 1, 2023, the months that will be taken into account for purposes of determining any LEP include months which elapse between the close of the individual's IEP and the close of the month in which they enroll, plus, for individuals who reenroll, the months that elapse between the date of termination of previous coverage and the close of the month in which the individual enrolls. We expect that these changes will decrease the number of months individuals are subject to the LEP. To implement these changes, we proposed the following changes to our regulations:

- At § 406.33, we proposed to revise paragraph (a) to reflect the requirement that, for individuals enrolling for the first time, the existing Part A LEP calculation requirements continue to apply to enrollments before January 1, 2023.
- At § 406.33, we specified that the months to be counted for calculating the Part A LEP begin with the end of the individual's IEP, and extend through the end of the month in which the individual enrolls.
- At § 406.33(c)(1), we proposed to continue to exclude certain months from the calculation of the LEP, based on the requirements currently in effect under § 406.33(a)(1) through (6).
- At § 406.33(c)(2), we proposed to exclude additional months from the calculation of the LEP for enrollments on or after January 1, 2023.
- At § 408.24, we proposed to revise paragraph (a) to apply the existing Part B LEP calculation months and exceptions to individuals who satisfy the requirements of § 408.24 before January 1, 2023.
- At § 408.24, we proposed to require that for individuals who satisfy the requirements of § 408.24 after January 1, 2023, the months to be counted for calculating the Part B LEP begin with the end of the individual's IEP, and extends through the end of the month in which the individual enrolls.
- At § 408.24(b)(1), we proposed to continue to exclude certain months from the calculation of the LEP, consistent with the requirements currently in effect under § 408.24 (a)(1) through (10).
- At § 408.24(b)(2), we proposed to exclude additional months from the calculation of the LEP for enrollments on or after January 1, 2023.
- At § 406.34, we proposed to revise paragraph (a) to reflect the requirement that, for individuals reenrolling in premium Part A, the existing Part A LEP calculation requirements continue to apply to enrollments before January 1, 2023.
- At 406.34, we proposed to redesignate paragraph (e) as paragraph (f) and add new paragraph (e) to require that the months to be counted for calculating the Part A LEP begin with the end of the individual's IEP and extend through the end of the month in which the individual reenrolls, and we would continue to include the months currently specified in paragraphs (b) and (d) of this section, as applicable, and the months from the end of the first period of entitlement through the end of the month during the GEP in which the individual reenrolled.
- At § 406.34(e)(2), we proposed to exclude the months of non-coverage in accordance with an individual's use of an exceptional condition SEP under § 406.27.
- At § 408.24, we proposed to amend § 408.24, to revise newly redesignated paragraph (c) to apply the existing Part B LEP calculation months and exceptions for reenrollments to individuals who satisfy the requirements of § 408.24 before January 1, 2023.
- At § 408.24(d), we proposed to require that for individuals who satisfy the requirements of § 408.24 after January 1, 2023, the months to be counted for calculating the Part B LEP include the number of months elapsed between the close of the individual's IEP and the close of the month in which he or she first enrolled and the number of months elapsed between the individual's initial period of coverage and the close of the month in which he or she reenrolled (as well as the number of months elapsed between each subsequent period of coverage and the close of the month in which he or she reenrolled).
- At § 408.24(d)(2)(i), we proposed to continue to exclude certain months from the calculation of the LEP, consistent with the requirements currently in effect under § 408.24(a)(1) through (10) and also excluding months before April 1981 during which the individual was precluded from reenrolling by the two-enrollment limitation in effect before that date.
- At § 408.24(d)(2)(ii), we proposed that if an individual uses an exceptional condition SEP under § 407.23 any months of non-coverage would not be counted towards the calculation of the SEP, provided the individual enrolls within the duration of the SEP.

We received a couple of comments related to the proposed technical corrections for the LEP.

Comment: A few commenters expressed support specifically for the proposed changes to the LEP; however, the majority of that support was expressed in regards to how it related to the SEP proposals. Commenters stated that the proposed changes would ease the financial burden that Medicare premiums with added penalties can present for Medicare beneficiaries. To further reduce financial burdens, a commenter recommended that the LEP should reset once an individual reaches age 65.

Response: We appreciate the comments and support. We note that under 1837(g)(1) of the Act an individual will have a new IEP for each continuous period of Medicare eligibility as defined by section 1839(d) of the Act and upon attainment of age 65. Therefore, if an individual was subject to an LEP prior to attainment of age 65, the premium amount is reset without the LEP effective with the month of attainment of age 65. In addition, no months prior to age 65 should be counted in the calculation of a premium increase.

Based on analysis of the public comments, we will be finalizing these technical proposals related to LEP as proposed.

B. Proposals for Extended Coverage of Immunosuppressive Drugs for Certain Kidney Transplant Patients (§§ 406.13, 407.1, 407.55, 407.57, 407.59, 407.62, 408.20, and 423.30)

1. History and Definition of Benefit

In 1972, Congress enacted section 299I of the Social Security Amendments of 1972 (Pub. L. 92–603), which amended section 226 of the Act to allow qualified individuals with ESRD [15] under the age of 65, to enroll in the federal Medicare health care program, beginning in 1973. These requirements are now codified in section 226A of the Act and implemented in our regulations at 42 CFR 406.13. As mentioned earlier, section 226A(a) of the Act provides that

[15] Under 42 CFR 406.13(b), ESRD means that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

certain individuals who are medically determined to have ESRD and apply for Medicare coverage are entitled to benefits under Medicare Part A and eligible to enroll in Part B. However, section 226A(b)(2) of the Act currently requires that an individual's entitlement under Part A and eligibility under Part B based on ESRD status ends with the 36th month after the month in which the individual receives a kidney transplant.

The termination of Medicare entitlement has led to some beneficiaries losing coverage of immunosuppressive drugs that transplant patients would still need. Per the 2018 US Renal Data System (USRDS) Annual Report, 32 percent of kidney transplant recipients ages 45–64 years old have no known or other creditable prescription drug coverage.[16] Section 402(a) of the CAA established an exception that permits certain beneficiaries who were kidney transplant patients to receive a limited Part B benefit effective January 1, 2023—covering only those immunosuppressive drugs described in section 1861(s)(2)(J) of the Act. Section 402(a) of the CAA also added section 1836(b) of the Act to support limited eligibility under Part B for beneficiaries whose entitlement to insurance benefits under Part A ends by reason of section 226A(b)(2). These individuals are eligible to enroll (or to be deemed enrolled) for the new Part B immunosuppressive drug benefit (herein referred to as the Part B–ID benefit).

Not all Medicare kidney transplant patients who lose entitlement to Part A coverage based on section 226A(b)(2), however, are eligible to enroll in the new Part B–ID benefit. The CAA provided that certain individuals are not eligible to enroll in the new program. In general, if the individuals are enrolled in certain specific forms of health insurance or other programs that cover immunosuppressive drugs, the individuals would not be eligible to enroll in the Part B–ID benefit. We discuss the excepted individuals and the specific forms of insurance and programs in greater detail in section II.B.2.b. of this final rule entitled ''Determination of Eligibility'' and in this final rule at § 407.55(b). Individuals who are seeking entitlement under the new Part B–ID benefit would also need to meet additional statutory criteria, as discussed in section II.B.2.b. of this final rule, and in this final rule at § 407.57.

Individuals enrolled in the new Part B–ID benefit would not receive Medicare coverage for any other items or services, other than coverage of immunosuppressive drugs. Section 402 of the CAA made conforming amendments to sections 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act. We proposed to revise §§ 407.1, 408.20, 410.30, 423.30 and establish a new subpart D (§§ 407.55 through 407.62) in 42 CFR part 407, entitled *Part B Immunosuppressive Drug Benefit* to implement the new Part B–ID benefit. (We note that in discussing these changes in the proposed rule at 87 FR 25102 we erroneously referred to § 407.65 instead of § 407.62 and are now correcting that error.)

Specifically, we proposed the following:

- At § 407.1(a)(6) we proposed that, sections 1836(b) and 1837(n) of the Act will provide for coverage of immunosuppressive drugs as described in section 1861(s)(2)(J) of the Act under Part B beginning on or after January 1, 2023.
- At § 407.1(b) we proposed to retain the language that states that part 407 sets forth the eligibility, enrollment, and entitlement requirements and procedures for supplementary medical insurance at § 407.1(b)(1), including the reference to the rules governing premiums in part 408 of this chapter.
- At § 407.1(b)(2), we proposed to add language stating that this part also sets forth the eligibility, enrollment, and entitlement requirements and procedures for the immunosuppressive drug benefit provided for under sections 1836(b) and 1837(n) of the Act, including the short title for the Part B-immunosuppressive drug benefit (Part B–ID benefit).

We received comments from patient advocates, associations, States, health plans, and individuals offering broad support on our proposal to extend coverage of immunosuppressive drugs under Medicare Part B for eligible individuals whose benefits under Medicare based on ESRD would otherwise end the 36th month after the month an individual receives a kidney transplant. The comments on those proposals and our responses follow.

Comment: Many commenters expressed that this benefit was long-awaited and overdue, and they pointed out that the extended coverage of these drugs would help to prevent organ rejection in the post-transplant patient, and thus, will save lives and conserve Medicare resources. Other commenters stated that extending coverage of immunosuppressive drugs is clinically and economically advantageous given the evidence of significant improvement in quality of life, health outcomes, and cost savings on dialysis and hospitalization after a kidney transplant. A commenter pointed out that their State currently covers similar groups with State-only funds, but supports the creation of the Part B–ID benefit under Medicare. The commenter stated that this limited expansion of Medicare Part B is very worthwhile, and even though it is quite limited in scope, it has the potential to be lifesaving for ESRD patients.

Response: We appreciate the overwhelming support for our proposal and thank the commenters for their feedback. We agree with commenters that these changes are advantageous and will have a positive impact on this population.

Several commenters supported, but had concerns or requested clarifications about, the Part B–ID benefit, particularly about the scope of the Part B–ID benefit. Those comments and our responses are as follows.

Comment: A commenter stated that Congress adopted a narrowly crafted provision that will leave some patients still facing high, and possibly prohibitive, out-of-pocket costs, including co-insurance costs, as well as physician and lab services, since the patient is not allowed to have other insurance. Another commenter noted that, due to a potential lack of insurance coverage 36 months post-transplant, some patients have chosen not to seek a transplant due to the cost concerns after Medicare eligibility expires. The commenter stated that while the new benefit does not entirely address cost considerations that can inhibit transplant, it is important that transplant professionals are fully trained about the new benefit and that it is factored into assessments of patients' potential stewardship of a transplanted organ. A commenter suggested that this patient population would benefit from continuing to receive coverage for physical therapy under Medicare, as side effects from immunosuppressive drugs could have untoward effects on health, including weight gain, that could result in limitation of movement.

Response: We thank the commenters for their feedback. Section 402(a) of the CAA ensures that individuals without certain other types of coverage whose benefits under Medicare based on ESRD would otherwise end with the 36th month after the month in which the individual received a kidney transplant,

[16] United States Renal Data System: *2018 USRDS Annual Data Report: Epidemiology of Kidney Disease in the United States,* Bethesda, MD, National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, 2018, from *https://cjasn.asnjournals.org/content/14/3/327.*

can maintain coverage for their immunosuppressive drugs essential to prevent rejection of their transplanted kidney. The benefit parameters of the statute are specific, and they do not allow coverage of other items and services. We refer the reader to section II.B.5 of this final rule for further information on education and outreach efforts for the implementation of the Part B–ID benefit.

We received numerous comments requesting clarification on, and recommendations for, coverage of various dosage forms of these drugs and other ancillary items that may be used in the post-transplant clinical setting. Those comments and our responses follow.

Comment: Several commenters questioned if the new benefit included coverage for compounded formulations of immunosuppressants (for example, a liquid formulation of an immunosuppressive medication not commercially available from the manufacturer that is prepared by a pharmacist), and a couple of commenters added that these formulations were frequently used in the treatment of pediatric kidney patients. Some commenters suggested that CMS consider coverage for mineral or electrolyte supplements, like magnesium, phosphorus, and bicarbonate related to post-transplant care that are particularly necessary in the care of pediatric patients. A commenter stated that transplant physicians must have uninterrupted access to all brand name drugs when he or she deems it necessary for a particular patient. A commenter questioned if drugs that are not categorized as immunosuppressive drugs, per se, such as anti-hypertensives, or drugs used for a patient's co-morbid conditions would be covered. A couple commenters inquired about the coverage of intramuscular (IM) and intravenous (IV) formulations, and asked if an administration fee is included in the Part B–ID benefit. A commenter stated that oral immunosuppressive drugs are clinically appropriate for the great majority of transplant recipients, but excluding coverage of the administration costs for those recipients who do require IV or IM drugs has the potential to impact access to an effective immunosuppressive drug regimen for patients who have no clinically appropriate alternative.

Response: Payment may be made for prescription drugs used in immunosuppressive therapy as described in federal regulations at 42 CFR 410.30(a). Further, § 410.30(c) states that drugs are covered under this provision irrespective of whether they can be self-administered. The lists of formulations in the proposed rule were examples only. Other types of formulations of immunosuppressive drugs defined in section 1861(s)(2)(J) of the Act as described above in the Summary section, including those that are not self-administered, would be covered and paid under this benefit. As set forth at 42 CFR 410.30(a) and described in § 50.5.1, Chapter 15 of the *Medicare Benefit Policy Manual,* covered drugs include those immunosuppressive drugs that have been specifically labeled as such and approved for marketing by the FDA. Drugs with indications for other conditions not described in 42 CFR 410.30(a), such as mineral deficiencies or hypertension, would not be covered under the Part B–ID benefit. CMS does not maintain a list of drugs covered under this benefit; rather, the Medicare Administrative Contractors (MACs) are expected to maintain, a list of these drugs as set out in § 80.3, Chapter 17 of the *Medicare Claims Processing Manual.* The MACs are expected to keep informed of U.S. Food and Drug Administration (FDA) additions to the list of the immunosuppressive drugs and update guidance as applicable. For inquiries regarding specific drugs with regards to coverage under section 1861(s)(2)(J) of the Act, individuals may contact the DME MAC that processes the claim.

With regard to compounded formulations of immunosuppressants, such drugs are not approved for marketing by the FDA [17] and, therefore, are not covered under the Part B–ID benefit. With regard to the commenters' question if a fee is included for the administration of IM and IV formulations under the Part B–ID benefit, as we stated above, section 402(a) of the CAA provides that the benefits are solely for purposes of coverage of immunosuppressant drugs described in section 1861(s)(2)(J). We do not have flexibility to include payment for the administration of the product based on the statutory language of this benefit, as it only includes the actual drug products.

Comment: A couple commenters expressed concern about whether a beneficiary would have uninterrupted access to these drugs in the case of a beneficiary having issues arise at the pharmacy counter. A commenter stated that the reimbursement system must be fully in place by the January 1, 2023 effective date, otherwise, patients will be presented a bill or denied their prescription altogether. The commenter also expressed concerns in the case where a pharmacy cannot verify an individual patient's eligibility for the new benefit. A commenter questioned how the beneficiary will be assured uninterrupted access to their drugs in the case of data errors at the pharmacy counter. A commenter urged CMS to make guidance and any related resources available to stakeholders including plans, providers, and beneficiary advocates as soon as possible given the January 1, 2023 effective date for key provisions in the rule. The commenter stated that technical guidance is needed to understand if and how entitlement for the Part B–ID benefit would be reflected in the Medicare Advantage Prescription Drug (MARx) system, and also requested that technical assistance be provided on the transaction reply codes that will be used in the MARx system. A commenter urged CMS to consider having a dedicated pharmacy hotline during the first few months so that questions and concerns by pharmacists can be resolved in real time. Commenters requested that CMS take steps to ensure that there is a safety net, and they recommended that CMS put in place a system that ensures access to medications while back-end determinations of payment responsibility are sorted out.

Response: We thank the commenters for their feedback and concern. In anticipation of the January 1, 2023 effective date for the Part B–ID benefit, Medicare payment systems, including the Common Working File (CWF), ViPS Medicare System (VMS), the Multi-Carrier System (MCS), and the Federal Intermediary Standard System (FISS) are being modified to properly process claims submitted for immunosuppressive drugs under the Part B–ID benefit. Other entities that will assist with claims processing, including the Medicare Part A and Part B MACs and the Durable Medical Equipment MACs, have also been engaged in the implementation efforts. Additionally, modifications are being made to ensure that eligible beneficiaries are accurately recognized within these systems. All operational and systems changes are slated to be completed prior to the January 1, 2023 effective date. Therefore, we expect beneficiaries' access will be uninterrupted as we implement this new benefit.

With respect to the public comment related to the MARx system, that system is used for beneficiary eligibility and

[17] *https://www.fda.gov/drugs/human-drug-compounding/compounding-and-fda-questions-and-answers.*

enrollment for Medicare Part C and Part D plans, and cannot be used by pharmacy providers to verify eligibility for the Part B–ID benefit. We do not expect that there will be a dedicated pharmacy hotline specific to the Part B–ID benefit; however, Medicare providers, including pharmacists and suppliers, can check patient eligibility, (as well as billing and other pertinent information) by either utilizing their MAC online provider portal or Interactive Voice Response (IVR) system, the Health Insurance Portability and Accountability Act Eligibility Transaction System (HETS), or their billing agencies, clearinghouses, or software vendors. For further information, please see the Medicare Learning Network instructions here: *https://www.cms.gov/files/document/checking-medicare-eligibility.pdf.* If a beneficiary has an issue at the pharmacy counter they may call 1–800–MEDICARE, and the 1–800–MEDICARE Call Center will troubleshoot as they currently do with existing provider access concerns. If the issue cannot be resolved, it will be escalated to the CMS Offices of Hearings and Inquiries via the current Ombudsman escalation process.

We note that individuals who enroll in the Part B–ID benefit will be provided with a new Medicare card that will include the specific language that describes the benefit. These beneficiaries will also receive a notice with that card which provides information on the benefit, including use of their prior and current Medicare cards, and contact information for further questions or concerns. We plan to educate pharmacies and other health care providers later this year on changes related to the Part B–ID benefit patient eligibility transaction that will reflect immunosuppressive drug coverage, including the eligibility inquiry transaction reply. Pharmacies should contact their MAC for claims processing technical assistance as they currently do for other claims processing issues. Further information on education and outreach to inform beneficiaries and stakeholders about the Part B–ID benefit is discussed in section II.B.5 of this final rule.

Medicare regulations do not require a pharmacist to provide minimal amounts of immunosuppressive therapy if the beneficiary's coverage cannot be verified; this would be up to the established process at the individual pharmacy.

Comment: A commenter stated that the proposed rule referred to ''successful'' kidney transplantation. The commenter recommended striking the term ''successful'' and simply stating that the new Part B–ID benefit is extended to kidney transplant recipients.

Response: We thank the commenter for their feedback and have removed successful from the description used in this final rule as official eligibility criteria. The term ''successful'' in the preamble of the proposed rule was used, generally, to describe a person whose Medicare Part A enrollment terminated 36-months after transplant and whose transplanted kidney functions to the point where the individual does not need a regular course of dialysis to sustain life. If the person's transplant was not successful, the patient would likely require a regular course of dialysis to sustain life, and eligibility for Medicare coverage under Part A and Part B based on ESRD would continue.

2. Part B–ID Benefit Eligibility, Enrollment, Entitlement, and Termination

a. Eligibility for the Part B–ID Benefit

Section 402(a)(2) of the CAA adds section 1836(b) of the Act, which establishes specific eligibility criteria for the Part B–ID benefit. Subject to exceptions, new section 1836(b)(1) of the Act provides that individuals whose entitlement to insurance benefits under Part A ends (whether before, on, or after January 1, 2023) by reason of section 226A(b)(2), and who meet certain additional requirements, would be eligible to enroll (or to be deemed enrolled) in Part B solely for purposes of coverage of immunosuppressive drugs in accordance with section 1837(n) of the Act. The principal limitations on eligibility for the Part B–ID benefit are set out in new section 1836(b)(2) of the Act. Under section 1836(b)(2)(A) of the Act, individuals enrolled in certain other types of health coverage would not be eligible for the Part B–ID benefit.

b. Determination of Eligibility

Section 1836(b)(2)(B)(i) of the Act requires the Secretary, in coordination with the Commissioner of Social Security (Commissioner), to establish a process for determining whether an individual who is to be enrolled, or deemed to be enrolled, in the Part B–ID benefit meets the requirements for such enrollment, including the requirement that the individual not be enrolled in other health coverage that would make them ineligible for the Part B–ID benefit under 1836(b)(2)(A) of the Act.

In order for an individual to be enrolled in the Part B–ID benefit, section 1836(b)(2)(B)(ii)(I) of the Act requires that an individual provide to the Commissioner an attestation that they are not enrolled and do not expect to enroll in the excepted coverage, as described in section II.B.2.a. of this final rule (''Eligibility for the Part B–ID Benefit''), that would make the individual ineligible for the Part B–ID benefit under section 1836(b)(2)(A) of the Act. Section 1836(b)(2)(B)(ii)(II) of the Act requires that the individual notify SSA within 60 days of enrollment in such excepted coverage. Based on these requirements, we proposed at § 407.59(a) and (b), that all prospective enrollees in the Part B–ID benefit must provide to the Commissioner, in either a verbal attestation or signed paper form, an attestation that the individual is not enrolled and does not expect to enroll in other health coverage that would make the individual ineligible for the Part B–ID benefit, and that the individual agrees to notify the Commissioner within 60 days of enrollment in such other coverage as described in § 407.55(b).

We proposed that beneficiaries will be able to primarily use a verbal (telephonic) attestation as part of enrolling in the Part B–ID benefit. Generally, for the verbal attestation, an individual would contact SSA, and an SSA representative, using a standard script, will convey the requirements to the individual that are in the CMS–10798 [18] attestation form, described in § 407.59 of this final rule. The individual will then attest that the individual does not have coverage under any of the specified health programs or insurance. The individual will also affirm that the statement provided was true and correct and that the individual acknowledged that there may be criminal penalties for making a false statement for purposes of obtaining these Medicare benefits. After the individual provides the oral attestation, the SSA representative will document the content of the call, and the document will be retained as required under SSA processes. We also proposed that individuals would be permitted to provide the attestation in writing with a pen-and-ink signature, if they choose to do so. Under our proposal, individuals could download a PDF-fillable version of an attestation form from SSA or CMS websites to print, sign, and mail to SSA, or to call SSA to request the form in hard copy.

As mentioned previously, we proposed to establish the eligibility criteria for the Part B–ID benefit in new § 407.55, entitled ''Eligibility to enroll.'' Specifically, in § 407.55(a), we proposed

[18] *Medicare.gov/forms-help-other-resources/medicare-forms.*

that an individual would be eligible to enroll in, be deemed enrolled, or re-enroll in the Part B–ID benefit if their Part A entitlement ends at the end of the 36th month after the month in which the individual received a kidney transplant, as set out under revised § 406.13(f)(2), and discussed in section II.B.5 of this final rule.

The types of coverage that would make an individual ineligible for the Part B–ID benefit are specified in section 1836(b)(2)(A)(i) through (v) of the Act. Specifically, the Act requires that individuals shall not be eligible for enrollment in the Part B–ID benefit during any period the individual is:

- Enrolled in a group health plan or group or individual health insurance coverage, as such terms are defined in section 2791 of the Public Health Service Act;
- Enrolled for coverage under the TRICARE for Life program under section 1086(d) of title 10, United States Code;
- Enrolled under a State plan (or waiver of such plan) under title XIX of the Act and is eligible to receive benefits for immunosuppressive drugs described in section 1836(b) of the Act under such plan (or such waiver);
- Enrolled under a State child health plan (or waiver of such plan) under title XXI of the Act and is eligible to receive benefits for such drugs under such plan (or such waiver); or
- Enrolled in the patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code and is either of the following:

++ Is not required to enroll under section 1705 of such title to receive immunosuppressive drugs described in section 1836(b) of the Act; or

++ Is otherwise eligible under a provision of title 38 of the United States Code (other than section 1710), to receive immunosuppressive drugs described in section 1836(b) of the Act.

We proposed regulation text at § 407.55(b) that would mirror those requirements, as set out in sections 1836(b)(2)(A)(i) through (v) of the Act. Section 1836(b)(2) of the Act contains specific exceptions that prevent individuals from enrolling in the Part B–ID benefit. For some of those provisions, section 402 of the CAA includes an additional limitation that the coverage must include coverage of immunosuppressive drugs. For other coverage, the statute does not include this limitation. When specific restrictions are included in one section of a statute but not in another, we presume that the language of the statute is intentional and deliberate with respect to adding the limitations. This is sometimes called the negative implication canon or *expessio unius est exclusion alterius.*

c. Enrollment in the Part B–ID Benefit

Section 1837(n)(1) of the Act states that any individual who is eligible for coverage of immunosuppressive drugs under section 1836(b) of the Act, that is, whose entitlement for hospital insurance benefits under part A ends by reason of section 226A(b)(2) may enroll or be deemed to have enrolled in the Part B–ID benefit as established in regulations and during an enrollment period described in statute. We proposed in § 407.57(d) that, to enroll in the Part B–ID benefit, an individual must submit the required attestation as described in § 407.59. We also proposed in § 407.55(c) that, if SSA denies an individual's enrollment in the Part B–ID benefit, the individual will be afforded an initial determination entitlement appeal as described in § 405.904(a)(1). This will ensure that the beneficiary's statutory and due process rights will be adequately protected.

We proposed to establish the provisions relating to enrollment and the entitlement to the Part B–ID benefit in new § 407.57, titled ''Part B–ID benefit enrollment.'' Specifically, we proposed at § 407.57(a) that an individual whose Part A entitlement ends at the end of the 36th month after the month in which the individual received a kidney transplant, on or after January 1, 2023, is deemed to have enrolled into the Part B–ID benefit effective the first day of the month in which the individual first satisfies the eligibility requirements proposed at § 407.55, and provides the attestation required in proposed § 407.59, prior to the termination of their Part A benefits.

In accordance with new subsections 1837(n)(2) and (3) of the Act, certain individuals have an ongoing opportunity to enroll in the Part B–ID benefit regardless of whether their entitlement under Part A ended before or after January 1, 2023. Therefore, we proposed at § 407.57(b) that an individual whose Part A entitlement ends in accordance with revised § 406.13(f)(2) (as discussed in section II.B.5. of this final rule), and who meets the Part B–ID benefit eligibility requirements at § 407.55 and provides the attestation required in § 407.59, may enroll in the Part B–ID benefit as follows:

- An individual whose entitlement ended prior to January 1, 2023 may enroll in the Part B–ID benefit beginning on October 1, 2022 or later.
- An individual whose entitlement ends on or after January 1, 2023 can enroll at any time after such entitlement ends.

We further proposed at § 407.57(c) that an individual who had previously enrolled in the Part B–ID benefit but whose participation in the benefit was terminated may re-enroll in the Part B–ID benefit at any time if they meet the eligibility requirements at § 407.55 and provides the attestation required in § 407.59. There are no late enrollment penalties assessed, regardless of when an individual enrolls or disenrolls from the benefit.

d. Effective Date of Entitlement

Provided the individual meets the eligibility requirements described at § 407.55 and provides the attestation as required under § 407.59, we proposed the following entitlement dates in § 407.57(e):

- For individuals whose Medicare Part A entitlement based on ESRD status ends on or after January 1, 2023, and who submit the attestation required under § 407.59 before the end of the 36th month after the month in which they receive a kidney transplant, their entitlement begins with the month their Part A benefits under section 226A of the Act would end.
- For individuals who do not provide an attestation as part of the enrollment process for the Part B–ID benefit before their Part A entitlement under section 226A of the Act ends, but later provides an attestation, their entitlement begins with the month following the month in which the individual provides the attestation required in § 407.59.
- For individuals whose entitlement ended prior to January 1, 2023 and who submit an attestation as part of the enrollment process from October 1, 2022 through December 31, 2022, their entitlement begins January 1, 2023.

e. Termination of the Part B–ID Benefit

Under sections 1838(b) and (h)(4) of the Act, individuals are not required to enroll or remain enrolled in the Part B–ID benefit. Individuals enrolled in the Part B–ID benefit can terminate their enrollment in the Part B–ID benefit by notifying SSA that they no longer wish to participate in the Part B–ID benefit. SSA would also terminate the Part B–ID benefit under certain conditions. Consistent with these requirements, we proposed in new § 407.62, ''Termination of coverage,'' that the effective date of the termination of an individual's entitlement under the Part B–ID benefit will depend upon the conditions of his or her termination, as described in this section.

We proposed the following requirements related to termination of the Part B–ID benefit:

- Under proposed § 407.62(a)(1), when an individual enrolls in such other health coverage that would make them ineligible for the Part B–ID benefit as set out in § 407.55(b) and notifies the Commissioner of this health coverage consistent with § 407.59(b), their Part B–ID benefit would be terminated effective the first day of the month after the month of notification.
- We proposed in § 407.62(a)(1) that when an individual enrolls in other coverage and provides notification consistent with § 407.59(b), their enrollment in the Part B–ID benefit would end effective the first day of the month after the month they provide the required notification. We also proposed at § 407.62(a)(1) that an individual may request a different, prospective termination date for the Part B–ID benefit to align with the coverage period under the other insurance plan or government program.
- We proposed in § 407.62(a)(2) that for an individual who enrolls in the Part B–ID benefit, but who subsequently enrolls in other health coverage as described in § 407.55(b) but does not notify SSA within 60 days consistent with § 407.59(b), the individual's Part B–ID enrollment would be terminated effective the first day of the month after the month in which SSA determines the individual is enrolled in health coverage described in § 407.55(b).
- We proposed in § 407.62(f) that, if an individual is involuntarily disenrolled from the Part B–ID benefit based on § 407.62(a)(2), (b) or (c), they will be permitted an initial determination appeal as outlined in § 405.904(a)(1), which is consistent with existing requirements applicable to Part B coverage.
- Consistent with existing requirements applicable to Part B benefits at § 407.27(a), which state that entitlement to Part B benefits ends on the last day of the month in which an individual dies, we proposed that entitlement to the Part B–ID benefit would end on the last day of the month in which the individual dies under new proposed § 407.62(b).
- We proposed at § 407.62(c) that termination of the Part B–ID benefit for individuals who fail to pay their Part B–ID benefit premiums would end as set forth in 42 CFR part 408. An individual will receive a grace period in which overdue premiums may be paid and coverage continued.
- We proposed at new § 407.62(d) that an individual may request disenrollment at any time by contacting SSA to inform them that they no longer want to be enrolled in the Part B–ID benefit. Such individuals' enrollment would end with the last day of the month in which the individual provides the disenrollment request.
- We proposed that an individuals' entitlement to the Part B–ID benefit will terminate effective the last day of the month prior to the month in which the individual becomes entitled to Medicare based on either age, disability, or ESRD under new proposed § 407.62(e).

We received numerous comments on our proposed requirements related to eligibility, enrollment, effective dates of coverage, and termination of the Part B–ID benefit. Those comments received and our responses are as follows.

Comment: Many commenters supported CMS' approach to allow individuals to use various methods to attest to their eligibility and enroll in the Part B–ID benefit. A commenter stated that the options that CMS proposed did not appear to be burdensome. Many commenters supported the verbal attestation, citing that it was simple and efficient, and it would avoid potential delays with signing and mailing statements that could result in delays in accessing needed immunosuppressive drugs. A commenter stated that a written approach would alleviate long wait times on SSA phone lines, but supported both verbal and written options. A commenter strongly opposed use of the written-only option for submitting an attestation. Other commenters recommended that CMS consider additional methods of attestation, particularly electronic submission, fax, or other signed documents.

A commenter stated that CMS took an open-minded and forward-thinking approach to attestation and enrollment in the Part B–ID benefit, and they were encouraged by the Agency's expedient use of the Executive Order (E.O.) on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. The commenter also stated that CMS' plans for defining a suitable process and criteria for beneficiary enrollment in the Part B–ID program is simple, straightforward, and customer-centric.

Response: We appreciate the feedback we received on our Part B–ID eligibility and enrollment proposals. CMS will be partnering with SSA to employ both a verbal and written attestation process for an individual to enroll in the Part B–ID benefit. An individual will be able to contact SSA to verbally provide an attestation to enroll in the Part B–ID benefit, or they can download a PDF-fillable form from the CMS or SSA website, complete the form, and mail to SSA. If an individual does not have internet access, an SSA representative can download the form and mail the form to the caller to complete and mail. At this time, forms will be accepted via U.S. mail delivery, but SSA plans to include an option to receive completed forms via facsimile (fax) in the future. We are also continuing to explore the future development of an electronic process to submit the attestation. To provide for flexibility for other attestation methods in the future, we are revising § 407.59 to state that an individual must attest to SSA in either a verbal attestation, signed paper form provided by SSA, by electronic submission, or fax under procedures determined by SSA. This will give SSA the flexibility to implement a fax or electronic attestation process in the future, when these options become available.

Comment: A commenter stated that submission of an attestation and confirmation of an individual's eligibility will be sufficient for SSA to enroll individuals in the Part B–ID benefit. The commenter expressed satisfaction with CMS' plan for monitoring and oversight that will enable it to address any concerns that may arise. Another commenter stated that we proposed that all prospective Part B–ID beneficiaries provide proof they lack insurance coverage of immunosuppressive drugs.

Response: In the proposed rule, we did not propose that individuals would have to provide proof that they do not have coverage of immunosuppressive drugs. In order for an individual to be enrolled in the Part B–ID benefit, the statute requires that an individual submit an attestation to SSA that they are not enrolled in, and do not expect to enroll in, coverage under any of the specified health programs or insurance described in law that make an individual ineligible for the Part B–ID benefit. It also requires that the individual notify SSA within 60 days of enrollment in the coverage described in law. We proposed that an individual would be able to provide this attestation verbally or in writing. We agree with the first commenter that submission of an attestation and confirmation of an individual's eligibility from their previous entitlement to Medicare based on ESRD is sufficient for SSA to enroll individuals in the Part B–ID benefit. As we stated in the proposed rule, we will monitor developments in the Part B–ID benefit program and take appropriate action to address any potential areas of concern, including with respect to

inaccurate attestations or other conditions involving ineligible individuals enrolling or remaining enrolled in the Part B–ID benefit. We will continue to evaluate opportunities to enhance our oversight to ensure compliance with the eligibility requirements on an ongoing basis.

Comment: A commenter questioned if an individual needs an SEP to enroll in the Part B–ID benefit.

Response: Individuals do not need an SEP to enroll in the Part B–ID benefit. Unlike Part B (or other parts of the Medicare program) where individuals can only enroll during an enrollment period, if an individual is eligible for the Part B–ID benefit, they can enroll at any time and will not be subject to an LEP for months of non-coverage. Because individuals can gain or lose health coverage throughout their lifetime, it is important to extend flexibility to those needing coverage of their immunosuppressive drugs.

A couple commenters provided feedback on the effective date of coverage for the Part B–ID benefit.

Comment: A commenter stated that, in order to prevent kidney allograft rejection and maintain kidney allograft function, immunosuppressive drugs must be taken every day, without exception. Therefore, it is essential that Part B–ID enrollment processes are straightforward, the steps are efficient, and that coverage be activated immediately upon enrollment (that is, and not the first day of the month that follows). Another commenter stated they supported CMS granting the Part B–ID benefit for eligible individuals in 2022.

Response: We appreciate the commenter's concern about an individual having uninterrupted access to these important drugs. However, enrollment in the Part B–ID benefit is a process—the individual has to submit an attestation; then SSA needs to verify the eligibility for the benefit and complete all operational processes established in SSA policy for enrollment. Based on reasonable timeframes to accomplish these actions, it would not be feasible for an individual to gain entitlement to the Part B–ID benefit on the actual date that the individual begins the process of enrollment. Also, Medicare coverage across programs starts on the first of the month, and premiums are based on a whole month of enrollment.

An eligible individual will be deemed to be enrolled in the Part B–ID benefit if they complete a timely attestation prior to the end of their 36th month of Medicare coverage based on ESRD, which ensures that the individual has seamless coverage of immunosuppressive drugs. To clarify, eligible individuals will be able to start the enrollment process in late 2022, but the Part B–ID benefit will not be effective until January 1, 2023.

A couple of commenters provided feedback on the proposed appeal and re-enrollment process for the Part B–ID benefit.

Comment: A couple commenters supported that individuals should be afforded an appeal process if their enrollment in the Part B–ID benefit is denied or terminated. Commenters also supported the re-enrollment option for individuals that have, and then lose, other comprehensive coverage. A couple of commenters also supported that no late enrollment penalties would be assessed for re-enrollment.

Response: We appreciate the support for our proposal to provide initial determination entitlement appeals upon denial of enrollment in or termination from the Part B–ID benefit. This ensures that the beneficiary's statutory and due process rights will be adequately protected. Also, we appreciate the support for our re-enrollment policy, as we understand that individuals can come in and out of health coverage during their lifetime. We agree that the re-enrollment option will provide a safety net for these important drugs, without the concern of a penalty, and we thank the commenters for their support of the late enrollment penalty policy.

We received several comments asking for clarification as to what individuals or groups were eligible for the Part B–ID benefit. Those comments and responses are as follows.

Comment: A commenter questioned whether CMS misinterpreted the statute with respect to the exception for eligibility under the new Part B in section 1836(b)(2) of the Act. The statute expressly provides that:

(2) EXCEPTION IF OTHER COVERAGE IS AVAILABLE.—

(A) IN GENERAL.—An individual described in paragraph (1) shall not be eligible for enrollment in the program for purposes of coverage described in such paragraph with respect to any period in which the individual, as determined in accordance with subparagraph (B)—

(i) is enrolled in a group health plan or group or individual health insurance coverage, as such terms are defined in section 2791 of the Public Health Service Act;

(ii) is enrolled for coverage under the TRICARE for Life program under section 1086(d) of title 10, United States Code;

(iii) is enrolled under a State plan (or waiver of such plan) under title XIX and is eligible to receive benefits for immunosuppressive drugs described in this subsection under such plan (or such waiver);

(iv) is enrolled under a State child health plan (or waiver of such plan) under title XXI and is eligible to receive benefits for such drugs under such plan (or such waiver); or

(v)(I) is enrolled in the patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code;

(II) is not required to enroll under section 1705 of such title to receive immunosuppressive drugs described in this subsection; or

(III) is otherwise eligible under a provision of title 38, United States Code, other than section 1710 of such title to receive immunosuppressive drugs described in this subsection.

(B) ELIGIBILITY DETERMINATIONS.—

(i) IN GENERAL.—The Secretary, in coordination with the Commissioner of Social Security, shall establish a process for determining whether an individual described in paragraph (1) who is to be enrolled or deemed to be enrolled in the medical insurance program described in such paragraph meets the requirements for such enrollment under this subsection, including the requirement that the individual not be enrolled in other coverage as described in subparagraph (A).

The commenter suggested that, under our proposed interpretation, an individual would not be entitled to Part B–ID even if the excepted health plan did not expressly cover post-transplant immunosuppressive therapy. The commenter also suggested that the statutorily identified excepted plans may not be as robust as Medicare Part B–ID, but the individuals would still be precluded from enrolling in Part B–ID. The commenter stated that transplant recipients with coverage other than Title XIX would be disadvantaged. The commenter also stated that they doubted that is what Congress set out to do and requested that CMS reconsider its interpretation. Another commenter stated that, for other coverage to render a patient ineligible for the Part B–ID benefit, the ''other'' coverage must cover immunosuppressive drugs.

Response: We disagree with the commenter's suggestion that our interpretation of the statute is incorrect. We trust that our interpretation of the statute, as described in the proposed rule(87 FR 25104), and in this final rule, is correct because it is consistent with

the plain language of the statute. If an individual has coverage that satisfies the conditions in section 1836(b)(2)(A)(1) of the Act, that individual is not eligible for enrollment in the Part B–ID benefit, even if the program does not expressly include coverage for immunosuppressive drugs. As we noted in the preamble to the proposed rule, only some of the programs identified in section 1836(b)(2)(A) of the Act expressly require that the patient have access to immunosuppressive drug coverage while other programs identified in section 1836(b)(2)(A) of the Act do not expressly require access to immunosuppressive drug coverage.

Comment: Another commenter stated that the Part B–ID benefit was for individuals whose Medicare eligibility has terminated after a kidney transplant and who do not have other access to coverage of such medication.

Response: The actual language of the statute is more precise than the commenter's general summary. To clarify, an individual's enrollment in any of the coverage specified under section 1836(b)(2)(A) of the Act would make the individual ineligible for the Part B–ID benefit.

Comment: Several commenters questioned Part B–ID eligibility for other populations/groups such as those in Indian Health Service (IHS), those who receive State kidney disease financial assistance, and those enrolled in programs such as a Medicaid program with limited coverage (for example, mental health coverage only). Another commenter inquired if enrollment in a charity program (for example, manufacturer-based free drug programs) constitutes ''a program that covers immunosuppressive drugs'' and questioned if it would preclude eligibility for the new Part B–ID benefit.

Response: As noted in the response to the previous comment, eligibility for the Part B–ID benefit is limited, but only individuals who are covered only under one of the express statutory provisions are excluded from eligibility. Generally, the programs that were identified by these commenters would not prevent an individual from enrolling in Part B–ID. Thus, if an individual only has coverage from the Indian Health Service (IHS), State kidney disease financial assistance, or charity/manufacturer assistance programs, the individual could still be eligible for Part B–ID. The same is true for an individual that is only eligible for restricted eligibility under Medicaid and CHIP, if the limited coverage does not make the individual eligible to receive benefits for immunosuppressive drugs.

Comment: A commenter questioned if an individual is eligible for the Part B–ID benefit if they were not entitled to Medicare at the time of their kidney transplant.

Response: Eligibility for the Part B–ID benefit in section 1836(b) does not depend on whether the individual was entitled to Medicare at the time of the kidney transplant. Instead, eligibility is based on whether the individual's Medicare coverage under Part A ended after the kidney transplant under section 226A(b)(2) of the Social Security Act.

Comment: A commenter requested that CMS clarify the status of the Part B–ID benefit with regard to beneficiaries who received pre-emptive transplants.

Response: An individual who has a pre-emptive kidney transplant, and meets the requirements for entitlement to Medicare Part A by reason of section 226A(b)(2),) of the Act, as outlined in at § 406.13(c), and, whose entitlement to insurance benefits under Medicare Part A ends (whether before, on, or after January 1, 2023) by reason of section 226A(b)(2) of the Act, would be eligible for Part B–ID, as long as they meet all other requirements for entitlement to the Part B–ID benefit.[19]

Comment: A commenter questioned if MA plans will have any role in the coverage of Part B–ID benefits. The commenter stated it was unclear as to whether those ESRD-eligible beneficiaries who are enrolled in MA plans and who have no alternative sources of coverage will have the opportunity to remain enrolled in these plans past 36 months post-transplant solely for the purpose of obtaining immunosuppressive drug coverage.

Response: Individuals enrolled in MA plans are not eligible for the Part B–ID benefit. Individuals who have Medicare Part A and B, regardless of the basis for which they are entitled to Medicare coverage (age, disability, ESRD, etc.), can enroll in an MA plan. However, if an individual has Medicare based on ESRD, and that individual's Medicare entitlement ends the 36th month after the month in which they receive a kidney transplant, they no longer have Medicare Part A and B, and therefore, are not eligible to remain in the MA plan. Individuals who meet all of the requirements to enroll in the Part B–ID benefit are also not eligible to enroll in or receive immunosuppressive drugs from an MA plan.

3. Ensuring Coverage Under the Medicare Savings Programs

The MSPs includes three primary[20] Medicaid eligibility groups that cover the Medicare Part A and/or B premiums and sometimes cost sharing for over 10 million low-income individuals and are defined at sections 1905(p)(1) and 1902(a)(10)(E) of the Act. One MSP eligibility group is the Qualified Medicare Beneficiary (QMB) group, which provides medical assistance through coverage of Medicare Part A and B premiums and cost sharing for certain individuals that meet specific requirements. In general, the individual must have income that does not exceed 100 percent of the federal poverty line (FPL) and resources that do not exceed 3 times the limit for SSI with adjustments for inflation as described in section 1905(p)(1) of the Act. A second MSP eligibility group is the Specified Low-Income Medicare Beneficiary (SLMB) group, which provides medical assistance through coverage of Part B premiums for individuals who would otherwise be eligible in the QMB eligibility group, except that their income exceeds 100 percent of the FPL and is below 120 percent of the FPL as defined at section 1902(a)(10)(E)(iii) of the Act. A third MSP eligibility group is the Qualifying Individuals (QI) group, which provides medical assistance of coverage of Part B premiums for individuals who would otherwise be eligible in the QMB group, except that their income exceeds 120 percent of the FPL and is below 135 percent of the FPL as defined at section 1902(a)(10)(E)(iv) of the Act. Federal statute does not allow States to implement MSP eligibility criteria (that is, income and resource limits and methodologies) that are more restrictive than those federal baselines. However, through authority granted by section 1902(r)(2) of the Act, many States have elected to implement income and/or resource methodologies that are more generous than the federal baselines for QMB, SLMB, and QI.

As a result of changes made under section 402(f) of the CAA, low-income individuals who are entitled to Medicare based on enrollment in the Part B–ID benefit may also be eligible

[19] According to Mayo Clinic, ''A preemptive kidney transplant is when you receive a kidney transplant before your kidney function deteriorates to the point of needing dialysis to replace the normal filtering function of the kidneys.''

https://www.mayoclinic.org/tests-procedures/preemptive-kidney-transplant/pyc-20384830.

[20] There is a fourth and much smaller MSP eligibility group that is the Qualified Disabled Working Individuals (QDWI) group, which provides medical assistance of coverage of Part A premiums for individuals who are entitled to Part A under section 1818A of the Act, and with income that does not exceed 200 percent of the FPL and whose resources do not exceed twice the maximum amount permitted under the SSI program. Section 402 of the CAA does not apply to QDWIs.

for enrollment in QMB, SLMB, or QI eligibility groups for payment of some or all of their Part B–ID benefit premiums and cost sharing.

Section 402(f) of the CAA revised section 1905(p)(1)(A) of the Act to change the definition of QMB to allow for individuals enrolled in the Part B–ID benefit to be eligible for medical assistance through Medicare cost sharing as QMBs if they otherwise meet the income and resource limits established at 1905(p)(1)(B) and (C) of the Act. The CAA also made similar changes under section 1902(a)(10)(E)(iii) and (iv) of the Act to make medical assistance available for Medicare cost sharing for Part B–ID benefit enrollees who qualify for the SLMB and QI eligibility groups. These changes would allow individuals enrolled in the Part B–ID benefit to attain eligibility for these MSPs for payment of their Part B–ID benefit premium and cost sharing for QMBs, and for payment of their Part B–ID benefit premium as SLMBs and QIs, if such beneficiaries also meet the relevant income and resource criteria. We proposed to codify this expansion of MSPs to apply to the Part B–ID benefit at new § 435.123.

Under sections 1905(p)(1) and 1902(a)(10)(E) of the Act, as modified by section 402(f) of the CAA, individuals eligible for the Part B–ID benefit could become enrolled in MSPs for payment of the Part B–ID benefit (MSP Part B–ID) through two paths on or after January 1, 2023. First, individuals could enroll in the Part B–ID benefit and newly apply for Medicaid and be determined eligible for the QMB, SLMB, or QI eligibility groups by their State. Second, individuals who are enrolled in an MSP eligibility group and whose Medicare eligibility is based on ESRD can transition to an MSP based on Part B–ID (MSP Part B–ID) the month after 36 months after transplant if they enroll in the Part B–ID benefit under certain conditions. In order to transition to MSP Part B–ID under this latter condition, the individual must (a) provide an attestation to SSA to be deemed to enroll in the Part B–ID benefit by the end of the 36th month after the month in which they receive a kidney transplant in accordance with the attestation requirements in section 1836(b)(2)(B) of the Act and (b) continue to meet the other eligibility criteria for an MSP eligibility group described in section 1905(p)(1), 1902(a)(10)(E)(iii), or (iv) of the Act. We focused our discussion on the second path for MSP Part B–ID enrollment, noting our aim of promoting continuity of coverage for individuals who are enrolled in an MSP eligibility group and whose Medicare eligibility based on ESRD is ending and that multiple variables can affect whether an individual can seamlessly transition to the MSP Part B–ID benefit.

In the proposed rule (87 FR 25107), we confirmed that loss of Medicare entitlement based on ESRD status constitutes a change in circumstances that may affect ongoing Medicaid eligibility. Accordingly, we stated that, under § 435.916(d)(1), State Medicaid agencies are required to promptly redetermine an individual's eligibility for Medicaid whenever it receives information about an individual's loss of Medicare entitlement based on ESRD status.

We explained that individuals who remain or are determined eligible for full-benefit Medicaid after this redetermination process would not be eligible for the Part B–ID benefit, because all States currently opt to cover immunosuppressive drug coverage for all full-benefit Medicaid eligibility groups and, by virtue of having such drug coverage under Medicaid, they would be ineligible according to section 1836(b)(2)(A)(iii) of the Act.

On the other hand, we explained that if the individual is not eligible for Medicaid on any basis, the State is required to screen the individual for potential eligibility for other insurance affordability programs as defined in § 435.4 in accordance with § 435.1200(e), as required under § 435.916(f). This would include referring the individual to an Exchange to determine whether the individual is eligible for enrollment in a Qualified Health Plan with advance premium tax credits (APTCs), cost sharing reductions (CSRs) or both as described in § 435.4. We also encouraged States to inform individuals who do not qualify for full-benefit Medicaid or the Exchange with either APTCs or CSRs of the MSP Part B–ID benefit as part of the redetermination process. Specifically, States can refer individuals to engage with SSA, State Health Insurance Assistance Programs (SHIPs), and beneficiary advocacy groups, among others, to obtain information about the Part B–ID benefit.

In order to prevent gaps in coverage of critical immunosuppressive medication when individuals transition off Medicare entitlement based on ESRD status, for partial-benefit Medicaid beneficiaries (beneficiaries enrolled in an MSP and not full-benefit Medicaid), we strongly recommended that States conduct early advance redeterminations under § 435.916(d) before individuals' Medicare eligibility based on ESRD status ends. We anticipated this early redetermination process, along with planned CMS outreach efforts for beneficiaries and multiple external partners, would improve the customer service experience of kidney transplant recipients, consistent with *the Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government. We also stated our belief that these measures* would have a positive health equity impact consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.* Finally, by helping to avoid gaps in Medicaid and Marketplace coverage, we noted that these efforts are consistent with the *Executive Order on Strengthening Medicaid and the Affordable Care Act.*

In general, individuals with ESRD are more likely to be from racial or ethnic minority groups.[21] Additionally, individuals who are younger, poorer, and less educated have more difficulty affording transplant medication, which has led to lower rates of graft survival among those populations.[22] Making immunosuppressive drugs more affordable to individuals through MSPs would improve lower income individuals' access to immunosuppressive drugs critical to prevent transplant failure. For a more comprehensive discussion of how the Medicaid redetermination process will operate for both full-benefit and partial-benefit Medicaid beneficiaries who have Medicare entitlement based on ESRD status and then lose full Medicare coverage, please see 87 FR 25107 through 25110 in the proposed rule.

Additionally, we noted that if an individual who had MSP coverage while entitled to Medicare based on ESRD status fails to enroll in the Part B–ID benefit after losing Medicare entitlement based on ESRD status, by the end of the 36th month after the month in which the individual received a kidney transplant, the individual would also lose access to the MSPs after the State provides appropriate notice and fair hearing rights. However, we explained that an individual may re-apply for the MSPs if they later enroll in the Part B–ID benefit under section 402(f) of the CAA. We also noted that

[21] See *https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease* discussing that ESRD prevalence is about 3.7 times greater in African Americans, 1.4 times greater in Native Americans, and 1.5 times greater in Asian Americans.

[22] Gordon, Elisa J., Prohaska, Thomas R., and Sehgal, Ashwin R. *The Financial Impact of Immunosuppressant Expenses on New Kidney Transplant Recipients Clin Transplant* 2008: 22, 736. Available at *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2592494/.*

if an individual did not previously enroll in an MSP while entitled to Medicare based on ESRD status, once they enroll in the Part B–ID benefit they may apply for and enroll in an MSP provided they meet the applicable eligibility criteria.

We also noted that States would be required to enroll individuals in an MSP if they are enrolled in the Part B–ID benefit, apply for an MSP, and meet the income and resource requirements of an MSP. Finally, we stated that individuals enrolled in the Part B–ID benefit and an MSP would lose coverage under both programs if any of four conditions exist for the individual: (1) enrolls in other health insurance that makes them ineligible for the Part B–ID benefit as described in § 407.55(b); (2) becomes eligible for Medicare Part A on the basis of age, disability or ESRD status; (3) voluntarily terminates coverage; or (4) dies. For a more fulsome discussion of how individuals lose eligibility for MSP Part B–ID, see 87 FR 25109 through 25110 of the proposed rule.

We received a number of comments on our proposals to implement MSP Part B–ID.

Comment: Several commenters offered general support for our proposals to implement MSP Part B–ID. A few commenters thanked us for highlighting the Medicaid redetermination process and the critical role it will play in providing continuity of health coverage, including for children. Another commenter supported our efforts for making the Part B–ID benefit affordable through MSPs to individuals living in Medicaid non-expansion States.

Response: We appreciate the support. As noted in the proposed rule at 87 FR 25125, we anticipate that most individuals who are eligible for MSPs and living in States that have opted to expand Medicaid would qualify for the adult group with full Medicaid benefits, including immunosuppressive drugs, and thus we focused our discussion on the MSP Part B–ID benefit for individuals who are eligible for MSP in non-expansion States. We thank the commenters for supporting our efforts to ensure that individuals are aware both of more comprehensive coverage options and that individuals who are unable to afford the Part B–ID benefit are able to seek assistance with premiums and cost sharing through enrollment in the MSPs.

Comment: In addition to the general comments on conducting education and outreach for the Part B–ID benefit, we describe and respond to in section II.B.5. of this rule, several commenters weighed in on conducting education and outreach specific to how the benefit intersects with Medicaid policy and processes. A commenter noted specific support for training Medicaid staff in addition to SHIPs, advocacy groups, providers and community organizations. Another commenter expressed support for our recommendation that States perform early Medicaid redeterminations for individuals who are partial-benefit dually eligible and losing Medicare entitlement based on ESRD. This commenter went on to suggest that CMS send States data on such individuals in advance of the termination from Medicare to facilitate early Medicaid redeterminations. A commenter suggested we educate transplant recipients and their providers about options for continuing coverage, including both the Medicaid redetermination process and subsidies available in the Marketplace. The commenter also stated that CMS could also do more than ''encourage'' States to inform beneficiaries about Part B–ID, by including it as part of their responsibilities under the Medicaid redetermination process at § 435.916. Another commenter recommended that CMS collaborate with SSA and other stakeholders in the transplant sector to help transplant recipients apply for Part B–ID prior to their loss of Medicare entitlement, thereby protecting their rights during the Medicaid redetermination process and MSP Part B–ID determination.

Response: We appreciate the comments focused on outreach and educational efforts around how Medicaid intersects with Part B–ID. We intend to make educational materials available to Medicaid staff as well as advocacy and provider groups. We plan to send States information on individuals enrolled in MSPs before they lose entitlement to Medicare on the basis of ESRD in order to help States conduct early Medicaid redeterminations. We also plan to mail letters to all individuals losing Medicare on the basis of ESRD that describe their health coverage options and list contacts for assistance and additional information.

Comment: Some commenters shared recommendations on operationalizing the MSP Part B–ID benefit, including the need: to ensure States, CMS and SSA can distinguish the limited Part B–ID benefit from full Part B benefits in the various data sources; for CMS to verify inactive Medicaid status for proper eligibility determinations and claims adjudication; and for CMS to issue guidance as quickly as possible given the tight implementation timeframes with the benefit.

Response: We agree that it is very important to provide States timely operational guidance. We have already provided States preliminary operational guidance in advance of finalizing the rule and will be providing more details in the coming months.

We have also been working with SSA over the past several months in order to ensure a smooth implementation of this benefit from an operational perspective. Among other tasks, we have worked on ways to identify the limited Part B–ID benefit from the full Part B benefits in various data sources and how to distinguish between premium and cost sharing payments for Part A and B benefits and MSP Part B–ID benefits to ensure proper payments.

Comment: A commenter requested a delay in the implementation of the Part B–ID benefit until October 1, 2023 or, in the alternative, a waiver of implementation until October 1, 2023. The commenter described several competing system priority updates in the next calendar year and inability to add any new coverage group and benefit not already in its previously planned system updates until the end of 2023.

Response: The CAA mandates that individuals can start signing up for the benefit on October 1, 2022 and that enrollment will begin on January 1, 2023.

Therefore, we cannot delay the effective date of this benefit. There is also no provision in the CAA statute that would allow us to grant a waiver to a particular State to delay enrollment in the MSP Part B–ID benefit. However, States that are not able to accept new values in existing fields from SSA and CMS by the dates prescribed in statute can work with us to manually enroll and report individuals in the MSP Part B–ID benefit. We are available to provide technical assistance to States with either manual workarounds or interpreting buy-in data.

Comment: A commenter expressed concern about inaccuracies in data exchanges between States and federal agencies regarding individuals' Part B–ID status at the start of the program. This commenter stated that there are currently challenges with the data exchange, especially for individuals in QMB and that adding Part B–ID data, particularly during a timeframe that is likely to overlap with the unwinding of the COVID–19 PHE, would create additional challenges.

Response: We agree that it is important to ensure the accuracy of data exchanges between States and federal agencies for the MSP Part B–ID benefit. As stated above, CMS has been working with SSA over the past several months

to ensure a smooth implementation of this benefit from an operational perspective and has already provided States some preliminary operational guidance. We will continue to make ourselves available to provide technical assistance to States as we move closer to the implementation date.

Comment: A commenter inquired whether State Medicaid programs need to expand coverage for immunosuppressive drugs that may not be on a formulary for individuals with Medicaid who are enrolled in the Part B–ID benefit.

Response: We surmise the commenter is specifically referring to individuals who enroll in MSP Part B–ID as a QMB because States are not responsible for paying for Part B–ID cost sharing for individuals enrolled either as SLMB Part B–ID or QI Part B–ID. The Part B–ID benefit is a continuation of the Part B drug coverage for immunosuppressive drugs, and as such, will work the same way for QMBs as it does currently for Part B immunosuppressive drug benefits. This means that to the extent States do not cover a particular immunosuppressive drug on their formulary that is covered as part of the Part B–ID benefit, the State must cover the benefit and pay the Part B–ID cost sharing after Medicare has paid primary. As a QMB, the individual would also be protected from paying any Medicare cost sharing charges out-of-pocket for Medicare-covered immunosuppressive drugs.

Comment: A commenter inquired when buy-in coverage should end for individuals enrolled in the new MSP Part B–ID eligibility groups who provide notice to SSA that they have other health insurance coverage. In particular, the commenter wanted to know whether State payment of the Part B–ID premiums should stop after a particular period of time or if buy-in should continue as long as CMS continues to bill States for the Part B–ID premiums. The commenter further requested that CMS clarify whether Part B–ID coverage continue to pay primary to other coverage until the Part B–ID benefit is terminated.

Response: Under new § 407.62(a)(1), if an individual notifies SSA they are enrolled in other coverage, their Part B–ID enrollment will end the first day of the month after the notification unless the individual requests and qualifies for a different prospective termination date. As long as an individual who reports other coverage continues to meet the other requirements for MSP Part B–ID, buy-in should continue until the individual is disenrolled from the Part B–ID benefit. For individuals enrolled in MSP Part B–ID, Medicare pays primary for Part B–ID until the individual is disenrolled from the Part B–ID benefit.

Comment: A commenter inquired who is responsible for disenrolling individuals in Part B–ID once they receive other health insurance coverage. In particular, the commenter sought to know if it is the responsibility of SSA or the State Medicaid program to notify SSA of other health insurance coverage.

Response: The CAA provides that individuals enrolled in certain other health coverage are not eligible for Part B–ID. As noted previously, new § 407.57 would require that individuals enrolling in Part B–ID attest that they are not enrolled in certain other health coverage, do not expect to enroll in such coverage, and will notify SSA within 60 days of enrolling in other coverage. As such, the individual has the responsibility to notify SSA of other coverage and SSA receipt of this information will trigger termination of Part B–ID under new § 407.62(a)(1). We encourage States to remind individuals to inform SSA as soon as possible, but no later than 60 days of enrolling in Medicaid.

Comment: A commenter inquired whether dual eligible special needs plans (D–SNPs) will help with the coordination of Part B–ID benefits and help ensure continuity of immunosuppressive drug coverage for D–SNP enrollees.

Response: A D–SNP is a type of Medicare Advantage (MA) plan. Under § 422.52(b)(3) in order to be eligible for a special needs plan, an individual must meet the eligibility criteria for an MA plan, which requires an individual be entitled to Medicare Part A and enrolled in Medicare Part B under § 422.50(a)(1). Because Part B–ID is a limited benefit that is distinct from Part B, an individual enrolled in the Part B–ID benefit would not be entitled to Medicare Part A or enrolled in Medicare Part B and would therefore, be ineligible for all MA plans, including a D–SNP. As such, they would have no role in coordination of benefits for Part B–ID. Moreover, any individual enrolled in a D–SNP would need to disenroll upon loss of Medicare entitlement based on ESRD. Similar to any other circumstance when individuals lose their entitlement to Medicare, we would expect the individual's D–SNP to inform them that they are ineligible for continuing D–SNP enrollment. Finally, individuals enrolled in MA plans are enrolled in Medicare Parts A and B, and are thus ineligible for the Part B–ID benefit. After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing without modification our proposals to implement MSP Part B–ID.

4. Part B–ID Benefit Premiums

The Secretary is required by section 1839 of the Act to announce the Part B monthly actuarial rates for aged and disabled beneficiaries. These amounts, according to actuarial estimates, will equal, respectively, one half of the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one half of the expected average monthly cost of Part B for each disabled enrollee (under age 65). The standard monthly Part B premium represents roughly 25 percent of estimated program costs for aged enrollees and is calculated to be 50 percent of this aged actuarial rate, plus the $3.00 repayment amount required under current law. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that the two groups pay the same premium amount.) Premiums may be further adjusted based on an individual's conditions, such as based on late enrollment or reenrollment (§ 408.22), the income-related monthly adjustment amount (§ 408.28), or for beneficiaries subject to non-standard premiums (§ 408.20).

We proposed to create a new paragraph § 408.20(f) to implement the requirements established under section 1839(j) of the Act and propose to modify other existing requirements for Part B premiums found in 42 CFR part 408 as required by statute for the Part B–ID benefit. Specifically, we proposed the following:

- In § 408.20(f)(1), we proposed that beginning in 2022, as required by new section 1839(j) of the Act, the Secretary would determine and promulgate a monthly premium rate in September of each year for the succeeding calendar year for individuals enrolled only in the Part B–ID benefit. Such premium would be equal to 15 percent of an actuarial rate that represents 100 percent of the estimated average monthly cost of Part B for each aged enrollee (age 65 or over). This amount is then rounded to the nearest $0.10.
- In § 408.20(f)(2)(i), the Part B–ID benefit premium would be subject to adjustments specified in §§ 408.20(e) (Nonstandard premiums for certain cases), 408.27 (Rounding the monthly premium), and 408.28 (Increased premiums due to the income-related monthly adjustment amount (IRMAA)).
- In section § 408.20(f)(2)(ii), we proposed that premiums for the Part B–ID benefit would not be subject to

increased premiums for late enrollment or reenrollment under § 408.22.

• In § 408.20(f)(3), we proposed that that the collection of premiums for the Part B–ID benefit would follow the existing requirements governing the collection of Part B premiums set out in § 408.6 and part 408, subpart C of title 42.

We received a comment on our proposals related to premiums for the Part B–ID benefit. The comment and our response follows:

Comment: A commenter was concerned that the monthly premium for Part B–ID would be higher than the monthly premium for regular Part B.

Response: To clarify, the monthly Part B–ID premium for 2023 will be $97.10. This is lower than the otherwise regular Part B premium. The CAA revised section 1839(j) of the Act to require that the Part B–ID premium should be equal to 15 percent of the monthly actuarial rate, that represents 100 percent of the estimated average cost of Part B for enrollees age 65 and over, for that succeeding calendar year. This amount is then rounded to the nearest $0.10.

5. Conforming Changes

Certain individuals are entitled to hospital insurance coverage under Medicare Part A on the basis of ESRD, as provided under section 226A of the Act. Section 406.13(f)(2) currently specifies that the period of entitlement to Medicare Part A for individuals whose Medicare entitlement is based on ESRD ends with the end of the 36th month after the month in which the individual has received a kidney transplant. We proposed to revise § 406.13(f)(2) to provide that beginning January 1, 2023, individuals no longer entitled to Part A benefits due to their coverage ending at the end of the 36th month after the month in which the individual received a kidney transplant, may be eligible to enroll in Part B solely for purposes of coverage of immunosuppressive drugs as described in § 407.55.

Medicare Part B covers health services including prescription drugs used in immunosuppressive therapy furnished to an individual who receives an organ transplant for which Medicare payment is made. Section 410.30(b) currently lays out the requirements governing eligibility for coverage of prescription drugs used in immunosuppressive therapy, stating that coverage is only available for prescription drugs used in immunosuppressive therapy, furnished to an individual who received an organ or tissue transplant for which Medicare payment is made, and provided the individual is eligible to receive Medicare Part B benefits. Chapter 15 of the Medicare Prescription Drug Benefit Policy Manual, section 50.5.1,[23] lists some of the FDA-approved, specifically labeled immunosuppressive drugs. They are: Sandimmune (cyclosporine), Imuran (azathioprine), Atgam (antithymocyte globulin), Orthoclone OKT3 (Muromonab-CD3), Prograf (tacrolimus), Celicept (mycophenolate mefetil, Daclizumab (Zenapax); Cyclophosphamide (Cytoxan); Prednisone; and Prednosolone. However, this is not intended to be an all-inclusive list and is subject to change. The manual guidance states that CMS ''*expects contractors to keep informed of FDA additions to the list of the immunosuppressive drugs.*'' This expectation would carry over to the Part B–ID benefit. MACs have issued articles on this topic and, generally speaking, covered immunosuppressive drugs are oral tablets or capsules. However, certain immunosuppressive drugs may be intravenously infused or intramuscularly injected. The majority of the immunosuppressive drugs have generic equivalents; however, certain newer agents remain available as brand only.

Where the conditions require an infused or injectable immunosuppressive therapy, these would be administered in the physician office or outpatient setting. In this case of the Part B–ID benefit, only the cost of the drug would be covered (not the service of administration). Immunosuppressive therapies covered under Part B are paid based on pricing methodology in 1847A of the SSA (typically, this is an ASP-based payment limit). Payment limits for many immunosuppressive therapies can be found on the ASP Drug Pricing File,[24] which is updated quarterly. Cost sharing is typically 20 percent.

We proposed to revise § 410.30(b) to specify that beginning January 1, 2023, individuals who meet the requirements as specified in section § 407.55 are eligible to receive prescription drugs used in immunosuppressive therapy.

An individual is eligible for enrollment into a Part D plan if certain conditions are met, as set out in section 1860D–1(a) of the Act. Section 423.30(a)(1)(i) of the regulations establishes that an individual is eligible for Part D if they are entitled to Medicare benefits under Part A or are enrolled in Medicare Part B. Section 423.30(a)(1)(i) would be revised to specify that an individual is eligible for Part D if they are entitled to Medicare benefits under Part A or enrolled in Part B, but does not include an individual enrolled solely in Part B for coverage of immunosuppressive drugs under § 407.1(a)(6).

Section 402 of the CAA states that the Secretary may conduct public education activities to raise awareness of the availability of more comprehensive, individual health insurance coverage (as defined in section 2791 of the Public Health Service Act) for individuals eligible under section 1836(b) of the Act to enroll or to be deemed enrolled in the medical insurance program established under this part for purposes of coverage of immunosuppressive drugs.

As a part of implementation, CMS will conduct education and outreach across the broad span of partners (that is, beneficiary advocacy groups, providers, associations, etc.) to ensure awareness and understanding of this benefit. Also, we note that all appropriate beneficiary notices, such as the Medicare based on ESRD pre-termination notice, (discussed in this final rule), the notice that will be provided to individuals who were previously terminated from Medicare based on ESRD to inform of the Part B–ID benefit, as well as the annual notice to individuals that have the Part B–ID benefit, will include information on the availability of, and contact information for, other comprehensive coverage that an individual may want to explore, such as Marketplace or Medicaid coverage. Additionally, as discussed in section II.B.3. of this final rule, we are encouraging States to provide education and assistance to individuals as part of the Medicaid redetermination process. We are also exploring steps to conduct outreach and education for beneficiaries and multiple external partners, including those who regularly assist beneficiaries with health insurance counseling, regarding the most appropriate coverage options for MSP beneficiaries transitioning off Medicare entitlement based on ESRD.

A significant number of the comments we received on the proposed Part B–ID benefit were related to education and outreach efforts needed for successful implementation of the benefit. Those comments and our responses are as follows.

Comment: Several commenters stated that education and outreach efforts were needed to educate beneficiaries, including advocacy groups and SHIPs, as well as States, medical providers, pharmacists, transplant centers, and ESRD Networks on the availability and

[23] *https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c15.pdf.*

[24] *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Part-B-Drugs/McrPartBDrugAvgSalesPrice.*

scope of this new benefit. A commenter stated that eligibility criteria will not be readily apparent to individuals, and another commenter stated that an effective education and outreach campaign will be critical to ensure individuals do not have gaps in coverage and understand their options for enrollment in the most comprehensive coverage that is available to them. Commenters suggested many forums and methods for messaging, including open forum calls to specifically address technical issues relating to the new Part B–ID benefit. Another commenter suggested that CMS create a detailed booklet (like Medicare & You) as well as a one-pager highlighting the essential details, and requested that CMS create streamlined/simple web-based education specific to the new Part B–ID coverage. A commenter stated that materials should address varying levels of health literacy for this vulnerable community, including pediatric-specific outreach materials.

Several commenters welcomed the opportunity to engage with CMS and other stakeholders on informative notifications and outreach to affected beneficiaries. A commenter suggested that the ESRD Networks be consulted in the development and delivery of culturally and educationally appropriate information.

Response: We thank the commenters for their feedback. We agree that education and outreach efforts should be wide-ranging, timely, and concise, and should be appropriate to inform all impacted stakeholders and beneficiaries. We appreciate the offer to assist us in developing and disseminating information on this important benefit change, and we will take all suggestions under advisement, including recommendations for messaging beneficiaries.

To note, some of our education and outreach efforts will include, but may not be limited to, engaging CMS Regional Offices' Local Engagement & Administration (LEA) teams, communication leads, and CMS clinical arenas—in other words, this will be an all-hands-on-deck initiative. CMS also plans to educate Marketplace Assisters, Navigators, and Agent/Brokers who assist with Marketplace enrollment so they properly understand the Part B–ID benefit as they counsel individuals on more comprehensive coverage options. Coordination with HHS Administration for Community Living (ACL) and their grantees, such as the State Health Insurance Assistance Programs (SHIPs) will also be critical.

Comment: Several commenters supported our proposed processes to notify beneficiaries of the Part B–ID benefit using the pre-termination notice issued by SSA. A commenter stated that information on the Part B–ID benefit, as well as information on other comprehensive coverage options, should be provided earlier in the process to raise awareness and give beneficiaries more time to consider their future coverage options and prepare for their health care needs after their 36-month post-transplant coverage ends. A commenter expressed that specific guidance be provided for those who will lose eligibility for MA coverage because they would no longer be entitled to Part A and enrolled in Part B. Another commenter stated that beneficiaries enrolled in MA Plans should receive the same information in their termination notices as the information made available to beneficiaries who are covered under Medicare Fee-for-Service (FFS).

A couple commenters stated that they shared CMS' concern that individuals might mistake this coverage as equal or similar to comprehensive coverage under other parts of Medicare. They urged CMS to conduct consumer and community testing to evaluate whether such confusion is increased or decreased with different naming conventions and descriptive strategies. Specifically, they suggested testing naming designations that use more plain language and highlight the fact that the coverage is distinct from Part B by putting the modifying word or words before Part B in the name.

Response: Beneficiaries are sent a pre-termination notice by SSA several months before the end of their Medicare entitlement. This pre-termination notice will include notification that the beneficiary's Medicare based on ESRD is ending, other comprehensive coverage options that may be available, and availability of the Part B–ID benefit, including how to apply for the Part B–ID benefit and financial assistance available for the benefit. All beneficiaries whose Medicare based on ESRD is terminating 36 months after a kidney transplant, regardless of whether those beneficiaries are receiving their benefits through Original Medicare (FFS), or through an MA plan, will receive the same pre-termination notice from SSA. We note that individuals who enroll in Part B–ID benefit will be provided with a new Medicare card which will include the specific language that describes the benefit.

We appreciate the support and feedback we have received from the commenters on our proposals related to eligibility, enrollment, effective dates of coverage, termination of, and premiums/cost sharing for the Part B–ID benefit. After review and consideration of all comments, we finalizing all of the Part B–ID benefit regulations as proposed with the exception of the attestation language at § 407.59. We will be finalizing that language to clarify that an individual must attest to SSA in either a verbal attestation, signed paper form provided by SSA, electronic submission, or fax, using procedures determined by SSA.

C. Proposal on Simplifying Regulations Related to Medicare Enrollment Forms (§ 406.7 and 407.11)

We proposed to revise §§ 406.7 and 407.11 to remove references to specific forms that are used to enroll in Medicare Part A and Part B, respectively. This is an administrative change that would simplify existing regulations and would have no impact on current eligibility requirements or enrollment processes or the use or availability of these forms. We proposed to continue to update our forms, including form numbers, and the conditions in which each form is used, through subregulatory guidance because these are procedural, and not substantive rules.

Specifically, we proposed to revise § 406.7 to provide that forms used to apply for Medicare entitlement are available free of charge by mail from CMS or at any Social Security branch or district office or online at the CMS and SSA websites. We also proposed to make technical edits to the text to state that an individual who files an application for monthly Social Security cash benefits as described in § 400.200 to apply also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time. Similarly, we also proposed to revise § 407.11 to provide that forms used to apply for enrollment under the supplementary medical insurance program are available free of charge by mail from CMS, or at any Social Security branch or district office and online at the CMS and SSA websites. Lastly, we also proposed a technical change in the last paragraph of § 406.7 to refer to ''monthly Social Security benefits'' instead of ''monthly social benefits.''

We received some comments on this proposal on Simplifying Regulations Related to Medicare Enrollment Forms. The comments and our responses follow.

Comment: While most commenters were in support of the proposal to remove specific form references from

the regulation to allow future flexibility in updating, creating and removing forms, a commenter was not in support of this proposal because it will confuse beneficiaries and reduce the ability of some to make decisions that benefit them.

Response: Removing the references of specific forms from the regulation text will not confuse beneficiaries nor will it have an adverse effect on a beneficiary's ability to make decisions. As written, the regulation describes the avenues in which a beneficiary can obtain the enrollment forms. Through any of these channels, the beneficiary will be clearly informed of which forms they need to make an enrollment. The forms are not changing as a result of our proposal, nor is the way the forms can be obtained. Removing the form references from regulation will allow CMS to make quick changes to the forms, as needed, which will in turn assist beneficiaries in having clear forms that present the information needed to make an informed enrollment decision.

Comment: A few commenters provided recommendations related to Medicare enrollment forms, while still supporting the changes as proposed. A commenter recommended that CMS use the Health Plan Management System (HPMS) system to notify MA plans about any changes made to Part A and B enrollment forms, in addition to the Paperwork Reduction Act (PRA) information collection comment process. Another commenter recommended that CMS and SSA take this opportunity to create new forms that are easier to understand and to routinely make the forms available in multiple non-English languages and accessible formats.

Response: As noted above, this would be an administrative change that would not affect the use and availability of enrollment forms, nor would it specifically result in the creation of new forms. If, in the future, forms are revised or created, they would have to go through the PRA approval process. In addition, as there are no operational changes resulting from this change, and a separate notification is not needed via HPMS.

We thank the commenters for their feedback on this proposal. After consideration of the comments, we are moving forward with finalizing this proposal and removing the specific form references from regulation. This will allow us the opportunity to explore the suggested form updates provided here, as well as other suggested updates such as alternate formats and multiple languages in the future, in order to make impactful changes that will improve the beneficiary experience.

D. Modernizing State Payment of Medicare Premiums (§§ 400.200, 406.21, 406.26, 407.40 Through 407.48, 431.625, 435.4, 435.123 Through 126)

CMS seeks to modernize the Medicare Savings Programs (MSPs) through which States cover Medicare premiums and cost sharing. As part of these efforts, we proposed updating the various federal regulations that affect a State's payment of Medicare Part A and B premiums (also known as State buy-in) for beneficiaries enrolled in the MSPs and other Medicaid eligibility groups. The proposed rule included policy proposals based on program experience intended to modernize the State buy-in program and technical updates to reflect statutory changes over the last 3-plus decades. We also proposed to codify in the regulations certain administrative practices that have evolved over the years, clarify minimum requirements for the State payment of Medicare premiums, and present options for States to streamline eligibility and enrollment in the MSPs and other Medicaid eligibility groups.

We proposed two major policy proposals: (1) replace decades-old stand-alone buy-in agreements by specifying that all provisions of the buy-in agreement are now set forth in the State's Medicaid State plan; and (2) limit State liability for retroactive Part B premiums for full-benefit Medicaid beneficiaries under a buy-in agreement to a maximum of 36 months prior to Medicare enrollment determination with a good cause exception. These changes will not limit access to benefits, create new liability, or cause other negative impacts for beneficiaries.

With regard to the technical updates, we proposed updates to (1) § 406.21 (individual enrollment), which was last revised in 1996; (2) §§ 406.26 (enrollment under State buy-in), and 407.40 through 48 (State buy-in agreements), which were last revised in 1991; [25] (3) § 431.625 (coordination of Medicaid with Medicare Part B), which was last revised in 1988; and (4) § 400.200 (general definitions), which was last revised in 1983. These revisions would update the buy-in coverage groups, clarify beneficiary protections related to buy-in coverage groups and clarify populations for whom States can obtain federal financial participation. We also proposed to add new §§ 435.123 through 435.126 and to revise § 435.4 (definitions and use of terms) to codify in CMS Medicaid regulations all MSPs under section 1902(a)(10)(E) of the Act.

We noted that these policies would improve the customer service experience of dually eligible beneficiaries as called for under *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* We anticipated our proposals would also advance health equity by improving low income individuals' access to continuous, affordable health coverage and use of needed health care consistent with *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.*

We received multiple comments that were not tied to specific regulatory proposals.

Comment: Many commenters expressed general support for updating the various regulations affecting the State payment of Medicare premiums. Some commenters noted that the proposals would provide additional clarity to States. Others noted that our proposals would expand access to the Medicare Savings Programs and improve their functionality.

Response: We thank commenters for their support. The impact of State buy-in is significant for many beneficiaries. State buy-in provides individuals with extra money in their pocket each month (the standard Part B premium is $164.90 per month in 2023) and helps eligible individuals access the Medicare benefits to which they are entitled. We agree that our proposals would clarify requirements for States and promote access to affordable health coverage and essential medical treatment for underserved individuals.

Comment: A commenter requested that CMS require States to accept and process MSP applications submitted by individuals during the first 3 months of their initial enrollment period for premium Part A or Part B (that is, the 3 months prior to the month they first qualify for Medicare), provided the Social Security Administration has already determined them eligible for Medicare. The commenter contended that State practices to deny MSP applications submitted before the

[25] We note that CMS made a minor technical update to § 407.42 to remove the reference to the obsolete regulatory provision, § 435.114 (Individuals Who Would Be Eligible for AFDC Except for Increased OASDI in the Income Under Pub. L. 92–336) in the November 30, 2016 **Federal Register** (81 FR 86382), entitled ''Medicaid and Children's Health Insurance Programs: Eligibility Notices, Fair Hearing and Appeal Processes for Medicaid and Other Provisions Related to Eligibility and Enrollment for Medicaid and CHIP,'' (hereinafter referred to as the November 2016 final rule).

individual is entitled to Part A or enrolled in Part B often result in an obligation to pay multiple months of premiums before their MSP coverage starts. According to the commenter, these upfront costs can prevent low-income individuals from accessing their Medicare benefits, lead individuals to delay needed health care, and cause genuine financial hardship.

Response: Although we appreciate the commenter's perspectives on this issue, these comments are outside the scope of the proposed rule. As such, we do not address them in this final rule.

1. State Plan Amendment as Agreement Between State and CMS (§ 407.40)

Section 1843 of the Act provides for ''agreements'' between a State Medicaid agency and the Secretary to facilitate the payment of Part B premiums for Medicare-eligible Medicaid beneficiaries (''buy-in agreements''). All States currently have elected to enter into such agreements and process Part B premium payments as provided under section 1843. Under section 1818(g) of the Act, starting January 1, 1990, States could expand their buy-in agreements to enroll Qualified Medicare Beneficiaries (QMBs) in premium Part A, with the State paying the Part A premiums on their behalf. As of the date of this final rule, 36 States and the District of Columbia include the payment of Part A premiums for QMBs in their buy-in agreement (''Part A buy-in States''), but 14 States use the group payer arrangement to pay Part A on behalf of QMBs under § 406.32(g) (''group payer States'').[26]

To execute agreements under section 1843 of the Act, the Secretary and States initially signed free-standing, written agreements that defined the then-scope of a State's buy-in agreement for Part B and bind the States to follow federal regulations and guidance under section 1843 of the Act. However, none of these original signed agreements have been updated for decades. In lieu of amending the decades-old free-standing written agreements, CMS and States have used Medicaid State plans and State plan amendments (SPAs) to document current State buy-in election choices and modifications. However, there are provisions in the free-standing buy-in agreements that are not reflected in these State plan provisions, and these non-current agreements have never officially been superseded. As such, for a complete picture of the full obligations a State has agreed to under section 1843, it is necessary to review both the free-standing agreement and deemed amendments to this agreement done through the SPA process. This is not an efficient or effective way to reflect the State's obligations under its buy-in agreement with CMS.

As described in the April 2022 proposed rule (87 FR 25113 through 25114), we proposed to use our authority under section 1902(a)(4) of the Act to amend the definition of a State buy-in agreement at § 407.40(b) by specifying that State plan provisions addressing what a State has agreed to under sections 1843 and 1818(g) of the Act constitute the State's buy-in agreement for purposes of those sections, including the scope of a State's buy-in practice, and that all aspects of a State's buy-in agreement with the Secretary, including what is set forth in the original buy-in agreements that is not currently in the State plan, should be set forth in the State's Medicaid State plan. We proposed that the State's submission of a SPA addressing what it is agreeing to under sections 1843 or 1818(g) of the Act or both, and CMS's approval, would thus constitute the ''agreement'' between the two parties for purposes of sections 1843 and 1818(g). We noted that this proposal codifies CMS' long-standing practice of effectuating changes in buy-in policy through the Medicaid State plans, rather than through the free-standing written agreements originally executed with each State. As a result, we stated that all free-standing buy-in agreements would be superseded by provisions related to buy-in practices within a State Medicaid plan.

Further, because approved State plan provisions addressing what a State has agreed to under sections 1843 or 1818(g) or both would constitute the buy-in agreement referenced in those sections, and because there are existing mechanisms for both State modification or termination and CMS enforcement of State compliance, we also proposed to delete § 407.45, which currently addresses a decision by a State to terminate its buy-in agreement, and CMS termination of a State's buy-in agreement for a State failure to comply with it.

We received the following comments, and our responses follow.

Comment: Several comments expressed support for our proposal to replace the old stand-alone agreements by specifying that the provisions of a State buy-in agreement shall be set forth in the State Medicaid plan. The Medicaid and CHIP Payment and Access Commission (MACPAC) noted this change codifies existing policies and helps to clarify State buy-in policies going forward. Other commenters indicated the provision would reduce administrative burden and improve efficiency. A commenter pointed out that this change would improve transparency, as SPAs are typically posted online while the stand-alone buy-in agreements are not.

Response: We thank the commenters for their support and agree that retiring the stand-alone agreements and housing the state buy-in agreement in the State Medicaid plan would promote greater efficiency, clarity, transparency and accountability.

Comment: A commenter contended that there is no place in the current State Medicaid plan that includes the State's buy-in agreement or that reflects the State's buy-in elections and requested that CMS specify whether we will issue a separate template in the State plan to describe State buy-in choices. Other commenters encouraged CMS to work actively with States to update their State plans, and proactively coordinate with all States that utilize a stand-alone agreement to prevent disruption to beneficiaries.

Response: We thank the commenters for their perspectives and agree with the importance of avoiding ambiguity about the prevailing State buy-in elections in each state and preventing disruptions in buy-in coverage for individuals. We do not agree that the State Medicaid plan lacks provisions related to State buy-in practices. As noted in the proposed rule (87 FR 25112), Section 3.2 ''Coordination of Medicaid with Medicare and Other Insurance'' of the State Plan currently includes the State's selection for buy-in. Nonetheless, we anticipate revising the Medicaid State plan template material for States to make buy-in group elections, consistent with this final rule. We also plan to provide technical assistance to States on updating their State plans and retiring stand-alone buy-in agreements, as needed, with the goal of avoiding disruptions to State buy-in. Because the provisions related to State buy-in practices in the State Medicaid plan will supersede the free-standing buy-in agreements, the State Medicaid plan will bind States to follow regulations and guidance under sections 1843 and 1818(g) of the Act.

We did not receive comments on our proposed deletion of § 407.45.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing without modification our proposed amendments

[26] The group payer arrangement allows certain parties (for example, States) to pay Part A premiums for a class of beneficiaries. See Program Operations Manual System (POMS) HI 01001.230 Group Collection-General at *http://policynet.ba.ssa.gov/poms.nsf/lnx/0601001230.*

to § 407.40 and § 407.45 specifying that State plan provisions addressing what a State has agreed to under sections 1843 and 1818(g) constitute the State's buy-in agreement.

2. Limiting State Liability for Retroactive Changes and Related Updates (§ 407.47)

Under section 1843 of the Act, States must pay Part B premiums for any individual starting the first month they are both a member of the State buy-in coverage group specified in the buy-in agreement and eligible for Part B. In some instances, SSA determines Medicaid beneficiaries eligible for Medicare for a retroactive period. This generally occurs when an individual under age 65 who files a claim for disability benefits at SSA [27] receives a favorable Social Security Disability Insurance (SSDI) award multiple years after the initial application, and SSA determines the individual eligible for SSDI benefits at or up to 12 months prior to the point of application, even though they were not able to receive SSDI payments timely because eligibility had not yet been determined. Individuals entitled to SSDI become entitled to premium-free Medicare Part A after 24 months of entitlement to SSDI, but in certain cases, an individual's favorable determination of SSDI is retroactive more than 24 months. In that case the determination of SSDI eligibility for a retroactive period for the individual means that the individual's premium-free Part A entitlement is retroactive as well. The individual is also retroactively eligible to enroll in Part B over this period.[28]

As described in the April 2022 proposed rule (87 FR 25113 through 25114), retroactive Medicare Part A entitlement for a Medicaid-eligible individual can have multiple implications for State Medicaid agencies. First, States may, under their buy-in agreement, be liable for Medicare Part B premiums for the retroactive period. If a State learns that SSA established retroactive premium-free Medicare Part A entitlement for a member of a buy-in coverage group, the State must review the individual's eligibility for Part B buy-in over the retroactive period. Under section 1843(d)(2) of the Act and the current version of § 407.47(a), States must pay Medicare Part B premiums for individuals beginning the first month a Medicaid beneficiary is enrolled in Medicaid and qualifies for Medicare, with no limit on retroactivity. Second, when Medicare enrollment is established retroactively for Medicaid beneficiaries, the State must determine if it has already paid a Medicaid claim for the individual, because Medicare is the primary payer for dually eligible beneficiaries when services are covered by both programs. In this situation, under section 1902(a)(25)(B) of the Act and § 433.139(d), the State must seek to recoup Medicaid payments to providers for any Medicare-covered services during the period of retroactive Medicare coverage, unless the State determines it is not cost-effective to do so. If Medicaid recoups funds paid to a provider, the provider may bill Medicare, which may require the provider to obtain an exception to Medicare's 1-year timely filing requirement as described in CMS guidance published in Pub. 100–04, Medicare Claims Processing Manual, Chapter 1, Section 70.7.3. However, the greater the length of time from the date of service, the more labor-intensive and administratively burdensome it is for the State to recoup Medicaid payments from providers, for the provider to submit a claim to Medicare, and for Medicare to process it.

As discussed in the proposed rule (87 FR 25114 through 25115), under section 1843(d)(2) of the Act and the current version of § 407.47(g), States technically became liable for retroactive Part B premiums for such beneficiaries going many years back, starting the first month SSA retroactively established Part A entitlement, with no limit on this retroactivity.[29] However, in implementing a court ruling in *NY State* v. *Sebelius* (N.D. NY, June 22, 2009), CMS adopted a policy under which it does not impose an obligation on States to make retroactive Part B premium payments when SSA operational and systems errors cause lengthy delays in SSDI awards and Medicare eligibility determinations for full-benefit Medicaid beneficiaries and the State cannot obtain the benefit of the Medicare coverage associated with the Part B premium payments the State would otherwise be obligated to make. In addition, CMS currently allows States to request relief on a case-by-case basis from retroactive premiums for periods involving lengthy delays in Medicare determinations to the extent that such delays cover periods for which the State asserts it is too late to benefit from Medicare coverage. CMS considers the potential for beneficiary harm (liability for uncovered medical costs) and the State's recoupment policy (that is, time limits on State actions to recoup Medicaid payments from providers) as factors in assessing these State requests. Similar to the current policy, the proposed rule also ensures that beneficiaries are protected from uncovered medical costs by limiting the application to full-benefit Medicaid beneficiaries and granting a good cause exception if the beneficiary will be harmed, as discussed in 87 FR 25115.

In the proposed rule (87 FR 25114 through 25115), we noted that rulemaking is warranted to ensure that the regulations reflect a clear and consistent policy, transparent to all States, on how CMS is addressing the equitable concerns addressed in the previously discussed court decision and subsequent CMS policy implementing it. Therefore, we proposed to add a new paragraph (f)(1) at § 407.47 under which State liability for retroactive Medicare Part B premiums for full-benefit [30] Medicaid beneficiaries under a buy-in agreement would be limited to a period no greater than 36 months prior to the date of the Medicare enrollment determination. We noted that this proposed revision conceptually aligns with the 2009 court decision limiting State liability for retroactive Medicare Part B premiums for full-benefit Medicaid beneficiaries.

Based on the most recent CMS data, we estimate that out of an average of nearly 150,000 individuals who are newly enrolled in Part B buy-in each month, fewer than 750 Medicaid beneficiaries, or 0.5 percent, require retroactive Part B buy-in for more than 36 months. (In a typical month, approximately 2,250 Medicaid

[27] When individuals file for disability benefits, SSA determines eligibility for both SSDI and supplemental security income (SSI). The same disability requirements apply to both programs, but other requirements differ. As a result, some individuals receive an SSI award while their SSDI claim or appeal is pending.

[28] SSA does not enroll the individual in Part B for the past months unless the individual pays SSA a lump sum amount reflecting the total costs of Part B premiums the individual would have paid had they been enrolled in Part B during that time or the individual is a member of the State buy-in coverage group.

[29] In States with 1634 agreements (''1634 States''), SSA automatically qualifies individuals entitled to SSI for Medicaid and, once they qualify for Medicare, CMS automatically enrolls those individuals in Part B buy-in. In such States, the retroactive disability and Medicare determinations for the SDW individuals resulted in CMS billing for retroactive Part B premiums going back several years. States without 1634 agreements also owed Part B premiums for the individuals enrolled in SSI and Medicaid during past period, but CMS only billed the state after the State requested buy-in for these individuals.

[30] ''Full-benefit'' Medicaid coverage, in the context of individuals who are considered dually eligible, generally refers to the package of services, beyond coverage for Medicare premiums and cost sharing, that certain individuals are entitled to under § 440.210 and § 440.330.

beneficiaries are retroactively enrolled in Part B buy-in for 12 months or more.)

In the proposed rule (87 FR 25115), we anticipated that our proposal would reduce administrative burden on providers for beneficiaries with Medicare determinations more than 36 months in the past, by relieving providers of Medicaid recoupment activities States may find cost-effective to pursue and the need, therefore, to resubmit the claim to Medicare. Additionally, we noted that it would not create beneficiary liability since Medicaid would have covered any medical costs the beneficiary incurred, and absent State buy-in, the individual would not be enrolled in Part B and, therefore, would not owe any premiums for periods greater than 36 months in the past.

Because this proposal reduces burden and promotes efficiencies, clarity and predictability for providers, States, and CMS, we found it consistent with the authority under section 1902(a)(4) of the Act for the Secretary to find methods of administration ''necessary for proper and efficient administration'' of the Medicaid program.

Although we considered proposing limits on State premium liability for time periods longer or shorter than 36 months, including a range from 24 to 60 months, we proposed a 36-month limit for two primary reasons. First, we stated our belief that Medicaid Management Information Systems (MMIS) would still have Medicaid claims data for dates of service going back at least 36 months. Second, we maintained that the length of time in our proposal is consistent with section 1902(a)(25)(I)(iv) of the Act, under which States must require health insurers, including Parts C and D plans, to accept claims submitted by the State within a minimum of 3 years from the date of service.

As discussed in the proposed rule (87 FR 25115), our proposal to limit State liability for retroactive Part B premiums applies only when Medicaid beneficiaries receive retroactive SSDI and Medicare eligibility determinations from SSA, not when Medicare entitlement delays stem solely from federal buy-in system errors or delays. Under section 1837(h) of the Act, the Secretary has discretion to grant relief to correct or eliminate the effects of such errors or inaction. Our proposal also does not address enrollment delays which can affect all members of a State buy-in coverage group, including individuals enrolled in partial-benefit Medicaid. The existing process for these cases allows the Secretary to consider the conditions of each case, and avoid harm to the beneficiaries.

We requested comment on our proposed 36-month limit, including how it compares with State Medicaid recoupment time-limits, or on alternative options to balance accuracy and burden. We also proposed a ''good cause'' exception to the 36-month limit in proposed paragraph (f)(2). This proposed provision would allow an exception for retroactive periods of more or less than 36 months if a currently unforeseen situation arises in which application of the proposed paragraph (f)(1) would result in harm to a beneficiary. In evaluating the good cause exception, the primary consideration would be whether the beneficiary has unpaid medical bills and needs Medicare coverage during the retroactive period for unpaid medical bills. We noted that new paragraph (f)(2) would also allow CMS to provide relief to States for periods of less than 36 months if we determine the State could not benefit from Medicare and limiting State liability would not result in harm to the beneficiary.

We received the following comments, and our responses follow.

Comment: Many commenters expressed general support for our proposal to limit State buy-in liability for the retroactive periods greater than 36 months. A commenter noted that it would reduce administrative burdens for States and providers without negatively impacting access to care for beneficiaries. MACPAC stated that the 36-month limit is in line with previous MACPAC recommendations for Medicaid program integrity efforts to make efficient use of federal resources and to minimize undue burden on States or providers. Some commenters supported the 36-month limit on retroactive liability in light of its inclusion of a ''good cause'' exception to allow for retroactive periods of more or less than 36 months. A commenter explained that an exception to cover a period exceeding 36 months may be needed on the rare instance that a beneficiary receives care from a non-Medicaid provider who accepts Medicare during an earlier period and needs Medicare coverage to address an outstanding medical debt incurred. Another commenter supported the ability for States to request relief for periods of less than 36 months if CMS determines the State cannot benefit from Medicare and limiting State liability would not result in harm to the beneficiary.

Response: We appreciate the widespread support for our proposal. The comments bolster our belief that this change would reduce unnecessary burden on providers and help State Medicaid programs run more efficiently without negative impact for beneficiaries. We agree with the need for the good cause exception to address rare cases in which a Medicaid beneficiary needs Medicare coverage to pay for care that Medicaid does not cover during a period further than 36 months in the past. We also concur that the 36-month limit strikes the right balance between payment accuracy and efficiency while the good cause exception provides CMS the flexibility to provide relief to States for periods of less than 36 months if we find that Medicare was unavailable during that time and the beneficiary would not be harmed.

Comment: A commenter asserted that the holding of the court in *NY State* v. *Sebelius* resulted in a 24-month retroactive buy-in limit in a particular State and questioned whether our proposal in the proposed rule would change the State's current 24-month limit. The commenter also questioned whether under our proposal, a State Medicaid program is only required to pay the premium for the retroactive period if there is a benefit to both the State and the beneficiary, and not necessarily back to when the beneficiary is entitled to Part A.

Response: We thank the commenter for the feedback, but we do not agree that the federal court ruling required a blanket 24-month retroactive limit in any particular State. In our implementation of the court's ruling, CMS began granting States' requests for relief, on a case-by-case basis, from retroactive premiums that cover periods for which the State contends it is too late to benefit from Medicare coverage. In assessing these State requests, CMS has considered the potential for beneficiary harm and the State's recoupment policy. We clarify, that under the good cause exception in new § 407.47(f)(2), we would grant a request for a retroactive limit of 24 months if we conclude that Medicare is unavailable beyond that period (for example, the State has a recoupment policy of 24 months) and the beneficiary would not be harmed. Absent approval of a good cause exception, the 36-limit would apply in all States.

Comment: Some commenters expressed support for this policy, but requested clarification on CMS' intention to reject buy-in records from beyond 36 months in the past. A few commenters noted the likely need for States to alter their own buy-in systems to refrain from submitting records from periods prior to 36 months.

Response: We appreciate the commenters' request for clarification on

the State and system changes required for this provision. We are still exploring these questions and the best ways to operationalize our proposal. Therefore, we are modifying the provision's effective date to January 1, 2024. This modification will provide additional time for CMS to explore and account for any State impacts and afford States a more reasonable timeline to implement systems changes should they prove necessary amidst competing systems priorities (for example, related to Part B–ID implementation and the unwinding of the COVID–19 PHE). This delay will not harm States and beneficiaries since CMS has an existing process to grant State requests for relief on a case-by-case basis when a beneficiary would not be harmed.

Comment: A few commenters pointed out situations in which a State may still have retroactive State buy-in liability for a period beyond 36 months. A commenter stated that retroactive limits should not apply to cases of Medicaid beneficiaries who were enrolled in Medicare but were improperly excluded from buy-in and need retroactive buy-in to rectify the missing period. Another commenter noted States may be required to pay retroactive premiums for periods greater than 36 months in situations in which an individual loses Medicaid coverage, later enrolls in Medicare, and subsequently regains Medicaid eligibility with a retroactive start date that overlaps with the previous Medicaid termination date. The commenter stated that the new proposed SEP following the loss of Medicaid coverage described in section A.2.D of the April 2022 proposed rule could increase the incidence of these cases.

Response: The first example above appears to describe a situation in which a clerical or other error prevented an individual from being enrolled in buy-in for the entire period the individual was eligible for buy-in. We agree that in this situation, the State would need to buy-in for the missing period of coverage to correct the buy-in coverage period. As such, this situation would be outside our proposed provision limiting retroactive Part B premium liability for periods exceeding 36 months. Similarly, we concur that our proposal does not limit buy-in liability in the second example described above, as the second example seems to describe past buy-in liability for individuals who are retroactively re-enrolled in Medicaid after they enrolled in Medicare whereas our proposal involves individuals who are still eligible for Medicaid when they become retroactively entitled to Medicare. Our proposal does not address this situation, but we will consider future rulemaking to limit State liability for retroactive periods in other situations based on program experience.

Comment: A commenter requested clarification on whether the new retroactivity limit in § 407.47(f) would supersede existing provisions in § 407.47(c), which requires States to pay Medicare premiums for individuals the first month they are a member of the buy-in coverage group and eligible for Part B.

Response: We thank the commenter for their question. We clarify that the retroactivity provisions in paragraph (f) are exceptions to the general rules laid out in paragraphs (b), (c), and (d). To alleviate confusion, we are revising our proposed regulatory text in this regard. We are also correcting obsolete cross-references to § 407.42 in those three paragraphs to align with our proposed amendments to that section described in section II.D.3.e. of this final rule.

In our proposed rule (87 FR 25115), we further proposed modifying § 407.47(a) to clarify our current requirement that States consider all bases of membership in the buy-in coverage group to determine the start date of buy-in. Under section 1843(d)(2) of the Act and § 407.47(a), the beginning of an individual's buy-in coverage period depends on the type of medical assistance they receive under the Medicaid State plan. Many individuals who qualify as a QMB or a SLMB also qualify under separate Medicaid eligibility groups. If a State determines that an individual is eligible for the QMB eligibility group and a separate Medicaid eligibility group, the individual may first become designated as a member of the buy-in coverage group corresponding to the non-QMB Medicaid eligibility group under which the individual is determined eligible, based on the effective date of such eligibility before they qualify for the buy-in coverage group corresponding to the QMB eligibility group. To determine the start date of the buy-in coverage period, our proposal clarifies at paragraph (a)(2) that the State must consider the earlier of the buy-in effective dates for the applicable group.

As discussed in the proposed rule (87 FR 25115 through 25116), we anticipated that our proposal on the effective date of buy-in coverage for individuals who qualify for the buy-in coverage group upon multiple bases would provide greater transparency and certainty to States and beneficiaries, and address confusion about existing requirements. We did not receive comments on our proposed clarification of current requirements under § 407.47(a).

In the proposed rule (87 FR 25122), we discussed our consideration of revisions to § 406.26 and § 407.40 to remove premium liability for States in other situations in which Medicare benefits are not available. The 2009 decision in *NY* v. *Sebelius* enjoined CMS from billing New York during periods of retroactive Medicare eligibility in which the State would not benefit from Medicare (that is, it was too late for Medicare benefits to be provided). We cited our belief that there may be similar situations in which Medicare eligibility can be established but Medicare benefits would not be provided. For example, individuals who are incarcerated or residing overseas may still retain entitlement to Medicare but be ineligible for payment for services because of their status.

We requested comment on the implications of limiting liability for States because Medicare is unavailable in these two examples or any others.

We received the following comments, and our responses follow.

Comment: Several commenters expressed support for removing Medicare payment responsibility from State Medicaid programs for individuals who are incarcerated as defined under the Medicare regulations at § 411.4(b). They noted that CMS encourages States to suspend Medicaid coverage during incarceration to facilitate the timely restart of Medicaid coverage upon release, easing burdens on both the State and the individual. However, these commenters contended that because States must still pay Medicare premiums for individuals with suspended Medicaid status, States have financial incentives to terminate rather than suspend Medicaid for dually eligible individuals who are incarcerated. A commenter also pointed out that limiting State premium liability for dually eligible beneficiaries, including those with suspended Medicaid status, comports with a federal interagency commitment to reduce barriers to reentry and ensure than individuals returning to the community do not experience gaps in health coverage.

Response: We thank the commenters for their perspectives. We agree with the need to remove disincentives to Medicaid suspension policies, which improve administrative efficiency and mitigate coverage gaps for individuals exiting the penal system. However, we do not include a provision to limit premium liability during incarceration in this final rule given the complicated operational, legal, and systems issues

involved and the need to obtain input from stakeholders on these matters, including through notice and comment rulemaking. However, we will consider these comments in the development of future rulemaking.

Comment: A commenter expressed concern with removing State liability for Medicare premiums while individuals are incarcerated, noting that Medicare may currently pay for services provided to inmates in cases where State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody under § 411.4(b). The commenter contended that removing State liability for buy-in during periods of incarceration in States that require individuals to repay the cost of medical after release would impose significant financial burden on individuals post-release and requested that CMS create an exception for these instances.

Response: We thank the commenter for raising the possible negative consequences of limiting buy-in liability during incarceration due to this exception to the Medicare exclusion of payment under § 411.4(b). While we are not finalizing any such proposal at this time, we will consider the commenter's input for future rulemaking.

Comment: A commenter noted their general support for suspending premium liability when Medicare is unavailable because the beneficiary is overseas.

Response: We thank the commenter for their input, but do not include a provision to limit premium liability for overseas individuals in this final rule given the complicated operational, legal, and systems issues involved and the need to obtain input from stakeholders on these matters, including through notice and comment rulemaking.

After considering the comments we received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing our proposal at § 407.47 with two modifications. First, we are making the 36-month limit on State retroactive liability and good cause exception effective January 1, 2024. Second, we are finalizing technical corrections to the regulation text originally proposed to clearly designate the new retroactivity limit in § 407.47(f) as an exception to the general rules described in paragraphs (b), (c), and (d) in that section and to remove outdated cross-references to other sections.

3. Technical Changes to Regulations on State Payment of Medicare Premiums

a. Revisions to General Definitions (§ 400.200)

Section 400.200 includes general definitions applicable to chapter IV of Title 42. In the proposed rule (87 FR 25116), we proposed to amend Medicaid regulations to add a new definition of the Medicare Savings Programs and to codify the Qualified Medicare Beneficiary (QMB), Specified Low Income Beneficiary (SLMB), Qualifying Individuals (QI), and Qualified Disabled Working Individual (QDWI) eligibility groups for the first time since their enactment. As such, we proposed to replace the existing definitions of QMB and QDWI in § 400.200 with streamlined references to the proposed new QMB definition in § 435.123 and the proposed new QDWI definition in § 435.126, respectively. We also proposed to add definitions for the Medicare Savings Programs, SLMB, and QI in § 400.200 that reference the corresponding proposals defining the Medicare Savings Programs in § 435.4 and the proposed codification of SLMB in § 435.124 and QI in § 435.125. We anticipated that the proposals in § 400.200, and related proposals in Part 435, would bring the regulations in conformance with existing statute and policy and promote consistency and clarity for States.

We did not receive comments on our proposed revisions and additions to the definitions in § 400.200.

b. Revisions to Individual Enrollment (§ 406.21)

Paragraph (a) of § 406.21 describes basic limitations on the timing of enrollment in Medicare Part A, in which an individual eligible for Part A may only enroll during his or her IEP, a GEP, an SEP, or, for Health Maintenance Organization/Competitive Medical Plan (HMO/CMP) enrollees, a transfer enrollment period, as set forth in paragraphs (b) through (f). At 87 FR 25116, we proposed to modify paragraph (a) to specify that such Medicare enrollment periods do not apply to individuals enrolling in Part A through a buy-in agreement, as defined in § 407.40. We noted that the provision would codify long-standing policy that QMB-eligible individuals may enroll in Part A at any time of year, without regard to the enrollment periods currently specified in paragraph (a).

We received the following comment, and our response follows.

Comment: A commenter expressed appreciation for this update and the clarity of the proposed revisions, due to confusion at the State level about some of the details in these regulations.

Response: We thank the commenter for their support and anticipate that this provision will enhance clarity and accountability.

c. Revisions to Enrollment Under State Buy-In (§ 406.26)

Section 406.26 describes enrollment in Medicare Part A through the buy-in process. In the proposed rule at 87 FR 25116, we proposed to add a new paragraph (a)(3) to codify long-standing policy against discrimination in the enrollment process, specifying that States with a buy-in agreement in effect must enroll any applicant who meets the eligibility requirements for the QMB eligibility group, with the State paying the premiums on the individual's behalf. We noted that, consistent with current policy, this provision prohibits States from applying a cost-effectiveness test to choose which individuals to enroll in QMB. We also proposed amending paragraph (b)(2) to clarify that, under a buy-in agreement, as defined in § 407.40, QMB-eligible individuals can enroll in premium hospital insurance (that is, premium Part A) at any time of the year, without regard to Medicare enrollment periods. As discussed in the proposed rule at 87 FR 25116, this proposal would codify long-standing policy.

We received the following comment, and our response follows.

Comment: A commenter expressed appreciation for this update, and the clarity of the proposed revisions, due to confusion at the State level about some of the details in these regulations.

Response: We thank the commenter for their support and anticipate that this provision will enhance clarity and accountability.

d. Revisions to Enrollment Under a State Buy-In Agreement (§ 407.40)

In our proposed rule at 87 FR 25116, we included a series of revisions to § 407.40 to reflect statutory updates and codify agency practices related to buy-in agreements.

In § 407.40(a), which describes pertinent legislative history on the State buy-in agreements, we proposed to add new paragraphs (a)(6) through (a)(9) to cover other statutory changes since § 407.40 was last updated in 1991.

In § 407.40(b), which defines terms related to buy-in agreements, we proposed several changes. First, we proposed to replace the term ''section'' with the term ''subpart C'' because terms defined here appear throughout this subpart, not only in § 407.40.

Second, we proposed to revise the definition for aid to families with dependent children (AFDC) because some Medicaid eligibility groups remain tied to AFDC, as that program existed as of July 16, 1996, prior to its elimination.

Third, we proposed to remove the definition of ''Qualified Medicare Beneficiary'' because the term is already defined in § 400.200.

Fourth, we proposed to revise the definition of State buy-in agreement, as discussed in detail in 87 FR 25112 through 25113 of the proposed rule.

Fifth, we proposed to add a definition of a ''1634 State'' to mean a State that has an agreement with SSA, in accordance with section 1634 of the Act, for SSA to determine Medicaid eligibility on behalf of the State for individuals residing in the State whom SSA has determined eligible for SSI.

Sixth, we proposed to add a definition of buy-in coverage group to mean a coverage group described in section 1843 of the Act that is identified by the State and is composed of multiple Medicaid eligibility groups specified in the buy-in agreement.

In § 407.40(c), which describes basic rules for enrollment under buy-in agreements, we proposed to revise paragraph (c)(1) to clarify that States with buy-in agreements in effect must enroll any individual who is eligible to enroll in Part B under § 407.10 and who is a member of the buy-in coverage group, with the State paying the premiums on the individual's behalf. We noted this change aligns with the newly proposed § 406.26(a)(3), which we discussed earlier in this final rule. Additionally, we proposed new text to clarify that States initiate buy-in for eligible individuals who are enrolled in the buy-in coverage group at any time of the year, without regard to Medicare enrollment periods. We explained that if a member of a buy-in coverage group is already enrolled in either Medicare Part A or B, the State will directly enroll the individual in buy-in and refrain from referring the individual to SSA to apply for Medicare.

We also proposed to add a new paragraph, at § 407.40(c)(5), which was incorrectly identified as § 407.40(c)(4) in the NPRM, to reflect that in a 1634 State, CMS will initiate, on behalf of the State, Part B buy-in for individuals receiving SSI. We proposed to codify this policy to clarify that all States must ensure that buy-in is initiated, as this current policy has been inconsistently applied in some States.

Finally, we proposed to add another new paragraph, at § 407.40(c)(6), which was incorrectly identified as § 407.40(c)(5) in the NPRM, to codify a requirement that premiums paid under a buy-in agreement are not subject to increase because of late enrollment or reenrollment.

We received comments on our proposed revisions and additions to enrollment regulations pursuant to a State buy-in agreement in § 407.40.

Comment: Some commenters supported our proposal because it codifies the policy that people with QI, like those with QMB and SLMB, may enroll in Part B under a buy-in agreement outside of Medicare enrollment periods.

Response: We thank the commenters for their support. As stated previously, we anticipate updating these regulations to reflect current policy and statute will enhance clarity and accountability and promote access to buy-in coverage.

e. Revisions to Buy-in Coverage Groups Available for Part B (§ 407.42)

Section 407.42 describes the Part B-related buy-in coverage groups authorized under section 1843(b) through (g) of the Act for the 50 States, the District of Columbia, and the Northern Mariana Islands. It appears that all States except one have elected the option under current paragraph (a) to cover individuals who are deemed recipients of the former AFDC program as cash assistance recipients for buy-in. As described at 87 FR 25117 through 25118 of the proposed rule, although we also consider individuals eligible under section 1931 of the Act to be deemed recipients of the former AFDC program, we have not previously identified such individuals as optional deemed cash recipients for the purposes of buy-in. Therefore, we clarified that individuals eligible under section 1931 of the Act are optional deemed recipients of cash assistance for the purposes of buy-in based on their classification as deemed recipients of AFDC. As such, we proposed allowing States to designate all deemed recipients of AFDC (that is, both children eligible based on title IV–E and individuals covered under section 1931 of the Act) as cash assistance recipients with eligibility groups related to SSI/SSP, or to only cover individuals who receive or are deemed to receive SSI/SSP as cash assistance recipients for buy-in.

As discussed in the proposed rule (87 FR 25117 through 25118), § 407.42 has been a source of confusion for States and other stakeholders. We anticipate that replacing it with a streamlined listing of the buy-in coverage groups, together with their underlying eligibility groups, is more readily understandable for all parties. First, we proposed replacing the existing regulation text in paragraph (a) with a general requirement that States must select one of the buy-in coverage groups listed in paragraph (b). We then proposed modifying the remaining buy-in coverage groups in paragraph (b) together with the eligibility groups they contain.

The modified buy-in coverage groups we proposed in paragraph (b) are as follows:

- Group 1: Individuals who are categorically eligible for Medicaid and:

++ Receive or are deemed to receive SSI or State supplemental payments (SSP), or both; and

++ At State option, individuals described in section 1931 of the Act or children with adoption assistance, foster care, or guardianship care under title IV–E.

- Group 2: All individuals described in Group 1 and three MSP eligibility groups (QMB, SLMB, and QI).
- Group 3: All Medicaid eligibility groups (that is, all individuals eligible for Medicaid).

We received the following comments, and our responses follow.

Comment: A commenter requested an explanation on why CMS is now proposing to require that States include individuals covered under section 1931 of the Act and the Temporary Assistance for Needy Families (TANF) program as deemed cash recipients for the purposes of buy-in. The commenter noted that when the AFDC program was eliminated in 1997, CMS told States that members of the TANF population were not considered cash assistance recipients for the purposes of buy-in. The commenter also questioned if CMS would allow enhanced FMAP for States to change their systems to include this population in buy-in.

Response: We acknowledge the commenter's concerns but clarify that we are not proposing to add, as an independent buy-in coverage group, recipients of the TANF program under § 407.42. As indicated in the proposed rule, TANF eligibility does not serve as a link to Medicaid eligibility, and there is thus no authority for a TANF-based buy-in coverage group under § 407.42.

The proposal to add to § 407.42 individuals eligible for Medicaid on the basis of section 1931(b) of the Act is part of our effort to update the buy-in regulations that, with a minor exception, CMS has not revised since 1992. To reflect the repeal of the AFDC program, we proposed to eliminate AFDC recipients as a buy-in population from § 407.42. However, the *deemed* AFDC population remains in Medicaid

statute and regulations.[31] As we explained in the proposed rule (87 FR 25117), federal law requires that, for purposes of Medicaid eligibility, individuals who are receiving adoption assistance, foster care, or guardianship care under Title IV–E of the Act, or low-income families described in section 1931(b)(1)(A) of the Act, be treated as deemed AFDC recipients. As explained previously, while CMS has previously recognized Title IV–E eligible Medicaid beneficiaries to be deemed AFDC recipients for purposes of the buy-in populations in sub-regulatory guidance, we have not yet confirmed the same for Medicaid beneficiaries eligible under section 1931 of the Act. We therefore proposed to confirm in this revision of § 407.42 that individuals eligible for Medicaid on the basis of their receipt of assistance under Title IV–E of the Act, or being described in section 1931 of the Act, are deemed cash assistance recipients for the purposes of buy-in.

To the extent that additional systems changes are needed, States may seek an enhanced matching rate as described in 45 CFR part 95 subpart F and Part 433 subpart C. States may submit an advanced planning document requesting approval for a 90/10 enhanced match for the design, development and implementation of their Medicaid Enterprise Systems initiatives that contribute to the economic and efficient operation of the program, including technology supporting implementation of additional Medicaid eligibility groups and related maintenance and operations.

Comment: A commenter requested that CMS clarify whether the State option under Group 1 for deemed AFDC recipients is a single option that includes all deemed AFDC recipients or whether States may select certain deemed AFDC recipients for buy-in.

Response: We thank the commenter and clarify that the State option under Group 1 for deemed AFDC recipients is a single option. Individuals eligible for Medicaid either on the basis of section 1931(b) of the Act or their receipt of adoption assistance, foster care, or guardianship care under title IV–E of the Act are examples of individuals who would necessarily be included in a State's election of this option.

Group 1 necessarily includes subgroups (b)(1)(i) (relating to Medicaid-eligible SSI and SSP recipients) and (b)(1)(ii) (relating to Medicaid-eligible deemed SSI and SSP recipients). At State option, Group 1 may also include subgroup (b)(1)(iii) (relating to Medicaid-eligible deemed AFDC recipients). To address any misunderstandings, we are modifying the regulation text to clarify that Medicaid-eligible deemed AFDC recipients, if included by the State, must encompass individuals eligible for Medicaid on the basis of section 1931(b) of the Act as well as individuals eligible for Medicaid based on their receipt of adoption assistance, foster care or guardianship care under part E of title IV of the Act.

Comment: A commenter questioned why the MSPs are considered a State option for buy-in when the MSPs are all mandatory coverage groups.

Response: We thank the commenter for the opportunity to clarify this provision. While the MSP eligibility groups (QMB, SLMB, and QI) are mandatory eligibility groups in the Medicaid program, section 1843 of the Act makes it an option for States to include them in their buy-in coverage groups for Part B. However, as noted previously, all States have elected to provide buy-in coverage for the MSPs under their State buy-in agreements. States cannot pay the Part B premiums on behalf of individuals who receive social security retirement or disability payments unless the individual is covered by the buy-in agreement.

Individuals whom a State enrolls under its buy-in agreements with CMS are exempt from the general rules governing Medicare enrollment periods, premium penalties and mandatory withholding of Title II benefits pursuant to sections 1840 and 1843 of the Act. Therefore, although the MSP groups are optional eligibility groups for buy-in agreements under section 1843, the MSPs function as mandatory groups for buy-in.

Comment: A commenter recommended that medically needy groups be excluded from Group 3 because medically needy individuals may wish or need to use Medicare premium payments to meet their spenddown amount, helping to ensure their Medicaid eligibility in a given budget period. The commenter further noted that including medically needy individuals for State buy-in causes individuals to cycle on and off of State buy-in depending upon whether the individual has met their spenddown amount in a given budget period, resulting in inconsistent and potentially harmful consequences for such individuals. The commenter also requested that CMS revise the buy-in coverage groups under § 407.42 to allow States to include in their buy-in data exchange with CMS individuals for whom the State pays Medicare premiums with State-only funds.

Response: We share the commenter's concern about the potential loss of Medicaid eligibility and buy-in coverage for medically needy individuals. However, the statutory authority for States to expand their buy-in populations beyond cash program and deemed cash program recipients is described in section 1843(h)(1) of the Act. This provision offers States a choice of additional buy-in populations including (A) individuals who are eligible to receive medical assistance under the plan of such State approved under title XIX, or (B) Qualified Medicare Beneficiaries (as defined in section 1905(p)(1) of the Act). CMS interprets section 1843(h)(1) of the Act to mean that, if a State does not elect to add all eligibility groups covered under its State plan to its buy-in agreement, beyond cash assistance and deemed cash program recipients, the QMB group is the only State-plan eligibility group which a State may selectively add to its buy-in agreement. (As described in the proposed rule (87 FR 25118), we proposed to update § 407.42 to clarify that the reference to QMB includes QMB, SLMB, and QI because 1843(h)(3) of the Act specifies that the reference to QMB includes SLMB and the State plan pages for buy-in treat QI like QMB and SLMB, linking the three eligibility groups under one buy-in coverage group.) CMS does not interpret section 1843(h)(1) to permit a State to selectively choose other eligibility groups for its buy-in agreement, such as all categorically needy groups (which would have the effect of excluding medically needy individuals). Therefore, we decline to accept the commenter's recommendation to allow States to cover the Part B premiums under their State buy-in agreement for all Medicaid eligibility groups except the medically needy.

Further, as discussed previously, States can only pay the Part B premiums on behalf of individuals who are members of the State's buy-in coverage group and eligible for Part B. We clarify that the State buy-in data exchange with CMS is used to pay Part B premiums for individuals covered under the State buy-in agreement, regardless of whether States receive FFP for their coverage of Part B premiums under § 431.625. Accordingly, we do not agree that further revisions to § 407.42 are warranted. However, we are available to provide technical assistance to States regarding the appropriate use of the State buy-in data exchange with CMS.

[31] Notwithstanding the repeal of the AFDC program, section 1902(a)(10)(A)(i) of the Act, which describes the mandatory Medicaid eligibility groups, retains the reference in subparagraph (I) to AFDC recipients.

The proposed rule reflected the three buy-in coverage groups that remain after updating and simplifying the eligibility groups. We also solicited comments on two sets of alternatives. The first alternative would have further reduced the number of Part B buy-in coverage groups under § 407.42 from our proposed three groups to two groups (that is, by narrowing the buy-in coverage group options to groups 2 and 3). The second alternative would have required all States to include all deemed AFDC eligibility groups as deemed recipients of cash assistance. We received no comments on either of these alternatives. However, we may consider this issue for future rulemaking.

f. Buy-In Programs in the U.S. Territories (§ 407.43)

We also solicited comments on updating § 407.43, which governs buy-in coverage groups for the four U.S. territories of Puerto Rico, American Samoa, U.S. Virgin Islands, and Guam,[32] similar to our proposal to streamline and clarify buy-in coverage groups in § 407.42. We did not propose revisions to § 407.43 in the proposed rule for the reasons described at 87 FR 25122 and instead sought comment on whether updating the buy-in coverage groups in § 407.43 with a more succinct framework would aid Medicaid agencies in the U.S. territories in administering their buy-in programs and improve beneficiary experiences.

We did not receive comments on this issue.

g. Revisions to Termination of Coverage Under a State Buy-In Agreement (§ 407.48)

Section 407.48 describes the process for terminating an individual's coverage under a State buy-in agreement when they are determined ineligible by either CMS or the State.

As discussed in the proposed rule at 87 FR 25118, States must communicate all disenrollment information through an established data exchange process with CMS. To align the regulation with current agency practice, we proposed amending paragraphs (c)(1) and (c)(2) and adding a proposed new paragraph (e) that would require CMS to prospectively convey to States, on a quarterly basis, a schedule of processing cut-off dates for each calendar month.

Delays in the receipt of buy-in terminations by CMS impact State and beneficiary liability after individuals lose eligibility for Medicaid and the State buy-in coverage group.[33] As currently described in paragraph (c)(1), CMS must receive a State buy-in termination notice during the second month after the individual loses eligibility in order for CMS to stop charging the State for Part B premiums the first month the individual no longer qualifies.

However, as described in the proposed rule (87 FR 25119), if delays in data exchange cause the State to send the termination notification for an individual with an effective date that is earlier than the second month before the processing month, under paragraph (c)(2), CMS will adjust the buy-in termination to the second month prior to the month CMS receives the deletion request. The State remains liable for premiums through the earlier months.

We did not receive comments on our proposed revisions to termination of coverage provisions in § 407.48.

We considered an alternative proposal for future rulemaking addressing beneficiary payment requirements after termination. Currently, when federal systems eventually process the buy-in termination, SSA can retroactively recoup up to 2 months of premiums from the individual's Social Security check. In practice, after buy-in termination, SSA deducts 3 months at a time to account for 2 months' retroactive premiums plus the current processing month.[34] We noted that when SSA deducts 3 months of premiums, this can jeopardize the individual's ability to pay for food and rent in the first month, increasing the risks of hunger or eviction.

We considered proposing further modifications to § 407.48(c) to limit the number of month of premiums for which SSA may immediately bill beneficiaries when buy-in ends. However, we did not formally propose a change, and instead solicited comments to inform future rulemaking on this topic.

We received the following comments, and our responses follow.

Comment: Several commenters expressed support for changing these policies because deducting multiple months of premiums from a single Social Security check can cause serious hardship to low-income individuals, as they rely on that source of income to assist with paying for food, rent, and other life's necessities. Some commenters recommended that the repayment of back premiums be spread over 6 to 12 months to minimize any negative impact on individuals, some of whom lose Medicaid eligibility for procedural reasons and remain income-eligible for Medicaid. A commenter urged at a minimum that those facing recoupment of back premiums be placed on a payment plan of $10 per month for the 2-month liability, which is the same payment schedule that Part D Low-Income Subsidy beneficiaries can request with respect to Social Security overpayments under Social Security Administration program instructions. The commenter also requested that the payment plan be automatic in light of program experience showing that low-income beneficiaries have difficulty understanding correspondence about their benefits and frequently do not understand changes until a negative event takes place. The commenter added that many individuals have limited English proficiency, disabilities, and cognitive impairments that may add barriers to initiating requests. The commenter lastly recommended that CMS consider eliminating or reducing repayment liability because 2 months of premium liability for this subset of the Medicare population is a relatively small amount in the context of the Medicare program but it can destabilize individuals in this economically fragile population, leading to negative housing and health outcomes that are much more expensive to fix.

Response: We appreciate the thoughtful comments on this topic and share the commenters' concern that drastic reductions in monthly income caused by the collection of back premium charges can jeopardize the health and financial stability of low-income individuals. However, we would need to further explore the operational implications, and have concluded that we would benefit from additional public input. Therefore, we are not finalizing the commenter's recommendations in this final rule. We will consider these comments in development of future rulemaking.

[32] The Northern Mariana Islands are governed by § 407.42.

[33] Under § 435.916(f), if an individual is determined by the State Medicaid agency to no longer meet the eligibility requirements for the eligibility group in which they are enrolled, the State Medicaid agency must determine whether the individual is eligible for Medicaid on a separate basis before proposing to terminate the individual's Medicaid eligibility. While the State is making that determination, the State must maintain Medicaid coverage, which means that, if the individual's eligibility group is included in the State's buy-in agreement, the State must continue pay for the individual's Part B premiums.

[34] Similarly, in cases where an individual is direct billed for premiums, Medicare would bill the individual for up to 2 months' retroactive premiums plus the current month's premium.

h. Revisions to Coordination of Medicaid With Medicare Part B (§ 431.625)

Section 431.625 describes the populations for which Federal financial participation (FFP) is available in expenditures for Part B premiums. Section 431.625(d)(1) identifies the basic rule, which is that FFP is generally unavailable to States for their coverage of Part B premiums, except where such coverage is provided to individuals receiving money payments under title I, IV–A, X, XIV, XVI, or State supplements under section 1616(a) of the Act (optional State supplements) or as required by section 212 of Public Law 93–66 (regarding mandatory State supplements). We proposed updating § 431.625(d)(1) to eliminate the reference to title IV–A, which has been repealed.

Section 431.625(d)(2) lists the exceptions to this basic rule; that is, it lists the Medicaid populations not receiving cash assistance on whose behalf States may both cover their Part B premiums and receive FFP for such coverage. We proposed updating the outdated list of groups in (d)(2) to remove obsolete groups, make technical changes to some remaining groups, and add two additional groups.

Three groups in the current § 431.625(d)(2) are obsolete, and we proposed to remove them from the regulation:

- Paragraph (i): AFDC families eligible for continued Medicaid coverage despite increased income from employment.
- Paragraph (vi): Deemed recipients of AFDC who are participants in a work supplementation program or denied AFDC because the payment would be less than $10.
- Paragraph (x): Individuals no longer eligible for the disregard of $30 or $30 plus one-third of the remainder, but who, in accordance with section 402(a)(37) of the Act, were deemed AFDC recipients for a period of 9 to 15 months.

Due to the proposed deletion of obsolete groups, we proposed to redesignate paragraphs (ii), (iii), (iv), and (v) as paragraphs (i), (ii), (iii), and (iv), respectively; and paragraphs (vii), (viii), and (ix) as paragraphs (v), (vi), and (vii), respectively. We proposed to make the following technical changes to the redesignated paragraphs:

- Redesignated paragraph (i): Delete ''435.114'' which CMS removed from the regulations in the November 2016 final rule.
- Redesignated paragraph (iii): Add cross-references to §§ 435.145 and 436.114(e), which have both been revised since this list was last updated,[35] and modify the description of the group to be consistent with the current description of children with adoption assistance, foster care or guardianship care under title IV–E of the Act.
- Redesignated paragraph (iv): Delete ''chapter'' and add in its place ''subchapter'', for specificity and for consistency with this list.
- Redesignated paragraph (vi): Delete the citation to section 1902(e)(3) of the Act and replace it with a cross-reference to § 435.225, the regulation which implemented section 1902(e)(3) of the Act in November 1990, consistent with other cross-references in this list.
- Redesignated paragraph (vii): Add cross-references to §§ 435.115 and 436.114(f) and (h), both of which CMS revised since last updating the list,[36] and modify the description of the Medicaid eligibility group to reflect the current description of families with extended Medicaid because of increased collection of spousal support under title IV–D of the Act.

While we proposed to eliminate from § 431.625(d)(1) the reference to title IV–A, we cited our belief that we must account for the statutory directive that individuals described in section 1931(b) of the Act be treated for purposes of Title XIX of the Act as receiving title IV–A assistance. We therefore proposed to add to the proposed redesignated paragraph (iii) individuals who are described in section 1931(b) of the Act.

Following the redesignated paragraph (d)(2)(vii), we proposed adding a new paragraph (d)(2)(viii) to include the QMB, SLMB, and QI eligibility groups, as proposed to be defined in § 400.200, to the eligibility groups for which FFP is available. This proposed addition of paragraph (d)(2)(viii) would codify long-standing policy and bring the regulation in alignment with sections 1902(a)(10)(E) and 1905(p)(3) of the Act, which authorize FFP for the State payment of Medicare Part B premiums for all of the MSPs.

In addition, we proposed a new paragraph (d)(2)(ix) to clarify that States receive FFP for Part B payments for adult children with disabilities described in section 1634(c) of the Act. Finally, we made a technical correction in § 431.625(d)(3) to update a cross-reference in the third sentence that is now inaccurate, changing ''435.914'' to ''435.915.''

In the proposed rule (87 FR 25120), we described how the availability of FFP for State expenditures for dually eligible individuals may affect State decisions regarding the breadth of its Part B buy-in coverage group. Sections 1902(a)(10)(E) and 1905 (p)(3)(A) of the Act and the proposed revisions to § 431.625 allow States to obtain FFP not only for Medicare Part B premiums for Medicaid eligibility groups related to cash assistance but for QMB, SLMB, and QI too. We noted that although States cannot obtain FFP for Part B premiums for other Medicaid eligibility groups, paying the premiums for these individuals under buy-in helps States maximize federal funding for health care services.[37]

We did not receive comments on our proposed revisions to regulations addressing Medicaid coordination with Medicare Part B in § 431.625.

i. The Medicare Savings Programs (§§ 435.4, and 435.123 Through 435.126)

In accordance with section 1902(a)(10)(E) of the Act, States must provide medical assistance to certain low-income Medicare beneficiaries. As discussed in detail in the proposed rule (87 FR 25120 through 25122), the four eligibility groups described in section 1902(a)(10)(E) of the Act are generally referred to collectively as the ''Medicare Savings Programs.''

The Medicare Savings Programs include four mandatory eligibility groups. First, we proposed to include the Medicare Saving Programs in the listing in subpart B of part 435 and to add to § 435.4 a definition of the Medicare Savings Programs consistent with section 113 of the Medicare Improvements for Patients and Providers Act (MIPPA), which defines the term Medicare Savings Programs to include the QMB, SLMB, QI, and QDWI eligibility groups.

Second, we proposed to add new § 435.123 to codify the QMB eligibility group under sections 1902(a)(10)(E)(i) and 1905(p)(1) of the Act. As discussed at 87 FR 25121 in the proposed rule, the new § 435.123 (b)(2)(i) and (b)(2)(ii) will

[35] CMS last modified § 435.145 in the November 2016 final rule and last updated § 436.114(e) in the November 21, 1990 **Federal Register** (55 FR 48601), entitled ''Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes under OBRA '87, COBRA, and TEFRA,'' (hereinafter referred to as the November 1990 final rule).

[36] CMS last modified § 435.115 in the November 2016 final rule and last changed § 436.114(f) and (h) in the November 17, 1994 **Federal Register** (59 FR 59372), entitled ''Aid to Families with Dependent Children; Extension of Medicaid when Support Collection Results in Termination of Eligibility''.

[37] The proposed rule incorrectly cited section 1905(a)(29)(B) of the Act in support of this statement. The correct citation is section 1903(b)(1) of the Act.

codify in regulation the statutory requirements pertaining to the treatment of a cost of living adjustment (COLA) for Social Security retirement, survivors, and disability benefits in determining eligibility for the QMB, SLMB, and QI eligibility groups. Under section 1905(p)(2)(D) of the Act, income attributable to a Social Security COLA is not countable as income for QMB, SLMB, or QI eligibility purposes during a ''transition month,'' which the statute defines as each month through the end of the month following the month the U.S. Department of Health and Human Services (HHS) publishes the revised official poverty level in the **Federal Register**.

We reminded States they must not wait until CMS notifies them of the new official poverty levels before adjusting their eligibility standards. States must adjust their eligibility standards to reflect the updated poverty level as soon as the Secretary publishes the new poverty level figures in the **Federal Register**. We also included proposed § 435.123(c)(1) and § 435.123(c)(2) reflecting that Medicaid covers premiums and cost sharing for QMBs enrolled in Part B for coverage of immunosuppressive drugs for QMB under section 402 of the CAA, as described in section II of this final rule.

Third, we proposed to add new § 435.124 for the SLMB eligibility group and new § 435.125 for the QI eligibility group described in section 1902(a)(10)(E)(ii) and (iv) of the Act, respectively.

Lastly, we proposed to add a new § 435.126 for the QDWI eligibility group. Paragraphs (a) through (c) of the proposed QDWI provision reflect that, in accordance with sections 1902(a)(10)(E)(ii) and 1905(s) of the Act, QDWI pays the Part A premiums for individuals under age 65 who become entitled to Part A based on their receipt of SSDI, but who subsequently lose SSDI, and as a result, their Part A entitlement, on the basis of gainful employment.

We received the following comment, and our response follows.

Comment: A commenter expressed support for these proposals, particularly with respect to disregarding COLA increases during transition months. The commenter advised that they are aware of States inappropriately terminating MSP coverage due to COLAs without adjusting for updated federal poverty level guidelines.

Response: We thank the commenter for their support. We reiterate that State termination of eligibility during a transition month, by continuing to apply the prior year's poverty level and failing to disregard the COLA, is inconsistent with the statute and harmful to beneficiaries. After considering the comments received and for the reasons outlined in the proposed rule and our responses to comments, we are finalizing without modification our proposed amendments to § 400.200, § 406.21, § 406.26, § 407.48, § 431.625, and § 435.4 and our proposed additions at §§ 435.124 through 436.126. We are finalizing §§ 407.40 and 435.123 with minor technical revisions to replace references to the resource standard for the Part D Low-Income Subsidy (LIS) Program with citations to the resource levels under section 1905(p)(1)(C) of the Act because section 11404 of the Inflation Reduction Act (IRA) of 2022 (Pub. L. 117–169) delinked the MSP and LIS resource standard starting January 1, 2024, when the LIS standard increases under the law, while the current MSP standard will continue to apply after that date. In addition, in response to comments received, we are finalizing a modified version of § 407.42 to clarify State coverage group options. This modification clarifies that Medicaid-eligible deemed AFDC recipients, if included in State buy-in agreements, must encompass individuals eligible for Medicaid on the basis of section 1931(b) of the Act as well as individuals eligible for Medicaid based on their receipt of adoption assistance, foster care, or guardianship care under Part E of title IV of the Act.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a ''collection of information'' requirement is submitted to the Office of Management and Budget (OMB) for review and approval. For the purposes of the PRA and this section of the preamble, collection of information is defined under 5 CFR 1320.3(c) of the PRA's implementing regulations.

To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In our April 27, 2022 (87 FR 25090) proposed rule, we solicited public comment on each of these issues for the following provisions that contain information collection requirements. We did not receive any such comments.

A. Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics' (BLS) May 2021 National Occupational Employment and Wage Estimates for our salary estimates (*www.bls.gov/oes/current/oes_nat.htm*). In this regard, Table 1 presents BLS' mean hourly wage, our estimated cost of fringe benefits and overhead, and our adjusted hourly wage.

TABLE 1—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage ($/hr)	Fringe benefits and overhead ($/hr)	Adjusted hourly wage ($/hr)
All Occupations	00–0000	28.01	n/a	n/a

The mean wage under All Occupations applies to a group of respondents that varies widely from working and nonworking individuals and by respondent age, location, years of employment, educational attainment, and other factors. We are not adjusting this figure for fringe benefits and overhead since the individual's enrollment activities will occur outside the scope of their employment, should they be employed.

B. Information Collection Requirements (ICRs)

The following topics are listed in the order of their appearance in section II of this preamble.

1. ICRs Regarding Beneficiary Enrollment Simplification (§§ 406.27 and 407.23)

The following changes will be submitted to OMB for approval under control number 0938–1426 (CMS–10797).

As described in section II.A. of this rule, we are amending §§ 406.27 and 407.23 to provide special enrollment periods (SEPs) for individuals experiencing an exceptional condition to enroll in Medicare premium Part A and Part B. To utilize these new SEPs, an individual will have to submit an enrollment request via a new enrollment form. The form will be used by individuals who have missed an enrollment period due to an exceptional condition to enroll in Part A and/or Part B (see section II.A.2. of this rule for a more detailed discussion).

We estimate that it will take an individual approximately 15 minutes (0.25 hr) at $28.01/hr to complete the form, pull together any required supporting documentation, and submit the completed form to CMS.

Due to the newness of the SEPs, CMS does not have precise data to estimate the number of individuals that may enroll under the new exceptional condition SEPs. However, we believe that the closest equivalent is the number of individuals enrolled during the GEP because the SEPs provide an opportunity to enroll outside of the GEP and we continue to believe that this is the best approach.

TABLE 2—GEP ENROLLMENTS FROM 2016–2021

Year	Individuals enrolling in premium Part A during the GEP	Individuals enrolling in Part B during the GEP	Total Part A and B GEP enrollments
2016	6,546	102,935	109,481
2017	2,021	99,728	101,749
2018	1,819	98,473	100,292
2019	2,223	104,808	107,031
2020	2,221	103,373	105,594
2021	1,918	103,230	105,148
Total	16,748	612,547	629,295
6-Year Average	2,791	102,091	104,882

Based on these data, we estimate that the average number of GEP enrollments per year is 2,791 for premium Part A and 102,091 for Part B (totaling 104,882 annually). We also assume that only a portion of the enrollments would involve an SEP enrollment request since the new SEPs are applicable only for exceptional conditions. In the proposed rule we assumed that 25 percent of individuals who enrolled during the GEP would now be eligible to enroll under an exceptional circumstance SEP.

Based on public comment we are making revisions in this final rule that could increase the number of individuals eligible for an exceptional circumstance SEP, we are increasing the estimated percentage of GEP enrollments transferring to SEP enrollments to 30 percent. As stated previously, we do not have data to estimate projected usage of the exceptional circumstance SEP, but we assume that it will be a small portion of GEP enrollments. We believe that 30 percent is on the high end of projected enrollments but are opting for that amount so as to not underestimate the burden of this provision.

Assuming that 30 percent of individuals who normally would have had to wait until the GEP to enroll will now be eligible using an SEP will result in 31,465 (104,882 enrollments × 0.30) SEP requests annually. As such, we estimate an annual ongoing burden of 7,866 hours (31,465 requests × 0.25 hr/request) at a cost of $220,327 (7,866 hr × $28.01/hr).

We did not receive any comments on the burden of our proposals. As discussed in section II.A. of this proposed rule, we are making the following changes in this final regulation.

- We are revising §§ 406.27(b)(1) and 407.23(b)(1), to specify that the SEP for Individuals Impacted by an Emergency or Disaster is also available if the individual did not live in an area impacted by a Federal, State or local government-declared disaster or emergency, but the individual's authorized representative (as defined at § 405.910), legal guardian, or individual person who makes healthcare decisions on behalf of the individual did. We are also revising §§ 406.27(b)(2) and 407.23(b)(2) to extend the duration of the SEP to 6 months after the end of the emergency declaration. These changes provide flexibility to individuals who are enrolling, or who require assistance enrolling, in Medicare Parts A and B after an emergency or disaster. We do not foresee these revisions affecting our proposed enrollment burden estimates.
- We are revising §§ 406.27(c)(1)(i) and 407.23(c)(1)(i) to include brokers or agents of health plans as entities that may have been a source of misinformation for the SEP for Health Plan or Employer Misrepresentation or Providing Incorrect Information. Originally, we proposed to only include employers and GHPs. Including brokers or agents of health plans as entities that may have been a source of misinformation expands the definition of who is a considered trusted sources of information. Agents and brokers of health plans could be considered as extensions of an individual's health plan and play a critical role in informing individuals of their enrollment options. We are also revising §§ 406.27(c)(1) and 407.23(c)(1) to expressly permit the use of either documentation of misrepresentation or written attestation. Originally, we proposed that written documentation was the only evidence accepted in order to qualify for this SEP. Including a written attestation will ensure that beneficiaries that individuals who receive documentation in forms other than written are not disadvantaged. Lastly, we are revising §§ 406.27(c)(2) and 407.23(c)(2) to increase the duration from 2 months to 6 months to facilitate consistency with the other SEPs. We do not foresee these revisions effecting our proposed enrollment burden estimates.
- We are revising §§ 406.27(d)(2) and 407.23(d)(2) to extend the SEP for Formerly Incarcerated Individuals duration to reflect that the SEP starts the

day of the individual's release from incarceration and ends the last day of the 12th month after the individual is released from incarceration. In addition, we are revising the entitlement date of this SEP at §§ 406.27(d)(3) and 407.23(d)(3) to allow an individual to choose an entitlement date retroactive to the date of their release from incarceration. The changes to extend the SEP duration from 6 months to 12 months and allow for retroactive enrollment will provide formerly incarcerated individuals with additional time to enroll while they are establishing stable conditions and reintegrating into society, as well as the option to have continuous coverage upon release from incarceration. We do not foresee these revisions effecting our proposed enrollment burden estimates.

- We are revising §§ 406.27(e)(3) and 407.23(e)(3) to allow additional opportunities for individuals to choose an entitlement date retroactive to the date of their Medicaid coverage termination. We do not foresee these revisions affecting our proposed enrollment burden estimates.
- We are revising §§ 406.27(f)(2) and 407.23(f)(2) to provide for a minimum duration of 6 months for the SEP for Exceptional Conditions. Originally, we proposed that the duration of the SEP would be determined on a case-by-case basis. We do not foresee these revisions effecting our proposed enrollment burden estimates.
- We have also updated Table 2 at 87 FR 25123 to include 2021 GEP enrollment data. The incorporation of this additional year of data slightly increased the number of projected annual GEP enrollments from 104,829 to 104,882. We accounted for this increase in our calculation previously. We recognize the modifications to the proposed SEPs could result in an increased number of SEP enrollments, however we believe that this increase would be negligible since we are not widening the audience who can be eligible for these SEPs.

2. ICRs Regarding Extended Months of Coverage of Immunosuppressive Drugs for Kidney Transplant Patients (§§ 407.57, 407.59, 407.62, and 407.65)

With regard to this rule's Part B–ID benefit attestation requirements, the following changes will be submitted to OMB for approval under control number 0938–1428 (CMS–10798). With regard to our requirements for terminating the Part B–ID benefit, the following changes will be submitted to OMB for approval under control number 0938–0025 (CMS–1763).

a. Attestations (CMS–10798, OMB 0938–1428)

As described in section II.B of this rule, Congress enacted section 402 of the CAA, amending sections 226A, 1836, 1837, 1838, 1839, 1844, 1860D–1, 1902, and 1905 of the Act to provide immunosuppressive drug coverage for certain individuals whose Medicare entitlement based on ESRD would otherwise end 36 months after the month in which they received a successful kidney transplant. We specified as a condition of enrollment, in §§ 407.57 and 407.59 of this rule and as required in section 402 of the CAA, that an individual must attest that (a) they are not enrolled and do not expect to enroll in coverage described in § 407.55 and (b) they will notify the Commissioner within 60 days of enrollment in such other coverage.

To facilitate deemed enrollment into the Part B–ID benefit, eligible beneficiaries whose coverage will be terminating 36 months after the month of a successful kidney transplant will be provided information about the Part B–ID benefit, and informed that they can enroll in this coverage by attesting that they do not have other excepted coverage and that they will notify the Commissioner of enrollment in such other coverage. We plan to include information about the Part B–ID benefit in the pre-termination notice, as discussed in section II.B.2.b. ''Determination of Eligibility'' of this final rule, and include instructions for individuals to enroll in the Part B–ID benefit, including how to provide the required attestation. We, along with SSA believe that a verbal (telephonic) method will be the most efficient method for a beneficiary to provide the attestation required to enroll in the Part B–ID benefit. It is easily accessible and will avoid potential delays in an individual receiving this vital coverage, as it will not be interrupted or delayed by disruptions in mail or other unforeseen circumstances. If the individual is not amenable to the verbal attestation, they can visit the website address provided to download a PDF-fillable version of the form to submit to SSA, or call SSA to request a paper form.

We received many comments on our proposed methods of attestation for the Part B–ID benefit, but we did not receive comments on our burden estimates. Commenters supported CMS' approach to allow individuals to use various methods to attest to their eligibility and enroll in the Part B–ID benefit, and several commenters recommended that CMS consider additional methods of attestation, particularly electronic submission, fax, or other signed documents. Those comments and our responses are in section II.B.2. ''Part B–ID Benefit Eligibility, Enrollment, Entitlement, and Termination'' of this final rule. In consideration of those public comments, and to provide for flexibility for other attestation methods in the future, we are revising § 407.59 to provide for additional attestation methods (that is, electronic submission or fax).

The attestation options will also be available for individuals who were previously terminated from Medicare based on ESRD after 36 months, or individuals who are reenrolling into the Part B–ID benefit for coverage of immunosuppressive drugs.

We expect that the population of individuals eligible for the Part B–ID benefit will use all available options: telephonic attestation, completion and submission of website-accessed PDF-fillable forms, and completion of paper forms requested from CMS or SSA, (and eventually fax and online) to provide the required attestation to SSA. We expect that each of the options for providing the required attestation, including future fax or online options, will require approximately the same burden. We estimate that individuals attesting telephonically or via a paper or PDF attestation form, (as well as future fax or online options), will have the same time of 10 minutes (0.167 hr) per response.

CMS's Office of the Actuary (OACT) expects an average of 767 individuals, whose Medicare entitlement based on ESRD which ended 36-months after the month in which they received a successful kidney transplant, to request enrollment in the Part B–ID benefit from 2023 through 2025. This estimate was provided by CMS actuaries based on historical information provided by SSA on the number of individuals who had prior Medicare Part A coverage and a kidney transplant between 2001 and 2019, and then making downward adjustments to account for those individuals who are deceased or who are anticipated to have other comprehensive coverage and will not be eligible for the Part B–ID benefit. The overall results of applying these assumptions is that roughly 1,800 individuals would be enrolled in the Part B–ID benefit in 2023, with an estimated growth of 250 enrollees each year thereafter. This would equate to approximately 2,300 individuals (1,800 in 2023 + 250 in 2024 + 250 in 2025) enrolling in the Part B–ID benefit from 2023 through 2025, or an annual estimated enrollment of 767 individuals

(2,300 individuals/3 years). The burden associated with the Part B–ID benefit is the time required to complete and submit an attestation. We estimate a total annual burden of 128 hours (767 Part B–ID enrollees * 0.167 hr/response) at a cost of $3,585 (128 hr * $28.01/hr).

b. Termination of the Part B–ID Benefit (CMS–1763, OMB 0938–0025)

In § 407.62 of this rule, individuals can voluntarily terminate their Part B–ID benefit at any time by notifying SSA. Primarily, an individual will contact SSA to request termination, either telephonically, or by visiting an SSA field office. If an individual is not amenable to contacting SSA to terminate their Part B–ID benefit, they can access the CMS or SSA website and print, sign and mail the form to SSA, or call SSA to request a paper form to submit their request. We expect that all available options (SSA contact, completion and submission of website-accessed form, and completion of paper form requested from CMS or SSA) to request a termination from the Part B–ID benefit will be used by beneficiaries. We expect that each of the options for requesting a termination from the Part B–ID benefit will require approximately the same burden, namely 10 minutes (0.167 hr) per response.

Currently, individuals who are requesting termination of premium Hospital Insurance (Part A) or termination of Supplementary Medical Insurance (Part B) or both can complete the Request for Termination Form (CMS–1763). While we are revising the form to include termination of the Part B–ID benefit, we are not changing our currently approved per response time estimate of 10 minutes (0.167 hr) per response.

We have limited means of estimating how many individuals will opt to terminate their Part B–ID benefit as this immunosuppressive drug benefit is yet to be implemented—the statutory effective date is January 1, 2023. However, for estimation purposes, we assume an average of 10 percent of the individuals enrolled in the Part B–ID benefit will voluntarily disenroll. As discussed in section III.B.2.a. of this final rule, OACT estimates that approximately 767 eligible individuals will enroll in the Part B–ID benefit annually from 2023–2025, we estimate that 77 of these individuals (767 eligible individuals × 0.10) will voluntarily terminate their Part B–ID benefit. This does not include individuals who are involuntarily terminated from the Part B–ID benefit because CMS or SSA determined that they had other coverage that made them ineligible for the Part B–ID benefit, or because they failed to pay the required premium. Also excluded from this number are individuals who will obtain Medicare coverage based on age, disability, or ESRD status, and therefore, will not remain enrolled in the Part B–ID benefit, and individuals who die. Our methodology was to estimate the total Part B terminations as a percent of total Part B enrollments annually from 2019–2021 (about 3 percent).[38] We then assumed that the Part B–ID benefit terminations would be more frequent, as we anticipate that individuals may explore options available for more comprehensive coverage, given an individual's other post-transplant associated expenses. Therefore, we increased that percentage from 3 percent to 10 percent. We then used OACT's growth estimate of 767 enrollments annually between 2023 and 2025 to estimate that 10 percent of those enrollments, or approximately 77 annually, would terminate their Part B–ID benefit voluntarily.

Based on voluntary terminations of the Part B–ID benefit only, by the methods described previously, we expect a total annual burden of 13 hours (77 requests to terminate the Part B–ID benefit × 0.167 hr) at a cost of $364 (13 hr × $28.01/hr) per year. Although, we have limited means to determine the actual number of individuals who will terminate their coverage, as we implement this benefit we will have data to better adjust (if/when needed) our burden estimates in the future.

c. Reporting of MSP Part B–ID Benefit Enrollment Information (CMS–10143, OMB 0938–0958) and (CMS–R–284, OMB 0938–0345)

As described in section II.B.3. of this final rule, under section 402(f) of the CAA, we proposed to modify three Medicare Savings Programs (MSP) eligibility groups (Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB) and Qualifying Individual (QI)) to pay premiums and, if applicable, cost sharing for low-income beneficiaries enrolled in Part B–ID (MSP Part B–ID). Under the MSP Part B–ID benefit, States will pay the Part B–ID benefit premiums and cost sharing for QMBs, and Part B–ID benefit premiums for SLMBs and QIs.

Once States enroll individuals in an MSP Part B–ID benefit, States will need to report the enrollment information to CMS. As discussed in our April 27, 2022, proposed rule (87 FR 25125), we anticipated enrollment in a MSP Part B–ID benefit mainly occurring in the 12 States that, as of December 2021, have elected to not expand Medicaid eligibility to adults with income up to 138 percent of the FPL (''non-expansion States'') and among QMB individuals in these States who fall into the coverage gap—that is individuals whose income prevents them from receiving Medicaid coverage, but is too low to qualify for advanced premium tax credit (APTC) or cost sharing reduction (CSR) in the Exchange. Based on reviewing internal data from 2021 to determine how many individuals were enrolled in MSPs, had Medicare entitlement based on ESRD, and were 36 months post-transplant and our actuaries' estimate, we anticipated only 250 individuals per year enrolling in the Part B–ID benefit, all of whom will enroll through the QMB Part B–ID benefit. Because we anticipated all of these individuals will initially be enrolled in MSPs and simply convert over to an MSP Part B–ID benefit when they lose Medicare entitlement based on ESRD and then enroll in the Part B–ID benefit, we did not anticipate that there will be any new or revised burden for these enrollees to apply for a MSP Part B–ID benefit other than the initial enrollment in the Part B–ID benefit. Rather, the burden for enrolling these individuals will fall on the State when it is performing a redetermination of Medicaid eligibility. As described in section II.B.3. of this rule, when an individual loses Medicaid eligibility, a State must already perform a redetermination under all categories of eligibility per § 435.916(f)(1). As such, we did not anticipate any new or revised burden on States enrolling these individuals either. We also anticipated that there would not be any new or revised reporting burden on States for the MSP Part B–ID benefit because individuals would receive coverage under existing MSP eligibility groups. States already submit enrollment information for all current MSP enrollees through the Medicare Modernization Act (MMA) under control number 0938–0958 (CMS–10143) and the Transformed Medicaid Statistical Information System (T–MSIS) under control number 0938–0345 (CMS–R–284) files, and we did not anticipate including the new MSP Part B–ID benefit enrollees in the MMA and T–MSIS file submissions to CMS would result in any new burden. For the MMA file, we proposed to inform States to report MSP Part B–ID benefit enrollees using the exact same code as for any other MSP enrollee, but that CMS would determine MSP Part B–ID benefit enrollment by examining both the MSP code and the Medicare enrollment reason code. For the T–MSIS file, we

[38] Data source: ELMO, 12/3/2021.

proposed to inform States to report MSP Part B–ID benefit enrollees using the exact same code as for any other MSP enrollee, but to fill in a different value for another field. Because we expected no coding changes to either MMA or T–MSIS files, we did not anticipate that any system changes would be necessary for submitting these files to CMS.

We did not receive any comments indicating that there would be any new burden. As a result, we are finalizing our assumptions as proposed.

3. ICRs Regarding Simplifying Regulations Related to Medicare Enrollment Forms (§§ 406.7 and 407)

As described in section II.C. of this rule, we are revising §§ 406.7 and 407.11 to remove all references to specific enrollment forms that are used to apply for entitlement under Medicare Part A and enrollment under Medicare Part B. This is an administrative change that has no impact on the use or availability of these forms and has no effect on any of our currently approved information collection requirements or burden estimates. We are removing references to the following enrollment forms that are currently OMB approved and are still in use under the approved scope:

- Medicare Part A Enrollment Forms (§ 406.7)

++ CMS–18–F–5 (OMB 0938–0251)—Application for Hospital Insurance Entitlement

++ CMS–43 (OMB 0938–0080)—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD)

- Medicare Part B Enrollment forms (§ 407.11)

++ CMS–18–F–5 (OMB 0938–0251)—Application for Hospital Insurance Entitlement

++ CMS–4040 (OMB 0938–0245)—Application for Enrollment in the Supplementary Medical Insurance Program.

++ CMS–40–B (OMB 0938–1230)—Application for Enrollment in Medicare Part B (Medical Insurance)

++ CMS–40–D [39]—Application for Enrollment in the Supplementary Medical Insurance Program.

++ CMS–40–F [40]—Application for Medical Insurance

We did not receive any comments on our proposal and are finalizing the change as proposed.

C. Summary of Annual Burden Estimates for Finalized Changes

TABLE 3—ANNUAL REQUIREMENTS AND BURDEN ESTIMATES

Regulation section(s) under Title 42 of the CFR	OMB control No. (CMS ID No.)	Respondents	Total responses	Time per response (hours)	Total time (hours)	Labor cost ($/hr)	Total cost ($)
§§ 406.27 and 407.23	0938–1426 (CMS–10797)	31,465	31,465	0.25	7,866	28.01	220,327
§ 407.59	0938–1428 (CMS–10798)	767	767	0.167	128	28.01	3,585
§ 407.62	0938–0025 (CMS–1763)	77	77	0.167	13	28.01	364
Total		32,309	32,309	Varies	8,007	28.01	224,276

IV. Regulatory Impact Analysis

A. Statement of Need

This final rule implements certain Medicare-related provisions of the CAA, as well as propose other enrollment-related changes. Section 120(a)(1) of the CAA revised the entitlement periods for individuals who enroll in Medicare Part B in the last 3 months of their IEP, deemed IEP, or during the GEP, beginning January 1, 2023. Under longstanding Medicare rules, the effective date of entitlement varies depending on whether the individual is enrolling during the IEP or GEP and when an enrollment is made during each specific enrollment period which could cause confusion. The changes should help eliminate this potential confusion by establishing a straightforward and uniform policy regarding Part A and Part B entitlement start dates.

Section 120 of the CAA also gives the Secretary the authority to establish SEPs for exceptional conditions. Under current rules, individuals are only able to enroll outside of the IEP or GEP either through States enrolling them through the buy-in process under section 1843 of the Act or by using a limited number of SEPs and, outside of that, relief is only available in instances where an individual did not enroll due to a Federal Government error. Other than these very specific scenarios, no exceptions are legally permissible.

The changes give the Secretary the flexibility to address other situations where a beneficiary missed an enrollment period and mirrors the authority that has long been available under the Medicare Part C and Part D programs. We believe this provision is likely to improve access to continuous coverage for individuals covered by Medicare Part A and Part B, either through expediting the effective date of coverage or by allowing for opportunities to enroll in coverage sooner. Therefore, we anticipate this change having a positive impact on communities who experience social risk factors impacted by lack of continuous health coverage. Our changes fulfill the goals of the January 28, 2021. *Executive Order on Advancing Racial Equity and Support for Underserved Communities through The Federal Government,* which directs the Secretary of the Department of Health and Human Services, among other things, to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.[41]

Further, section 402 of the CAA extends immunosuppressive drug coverage for individuals whose Medicare entitlement based on ESRD ends 36-months after the month in which they received a successful kidney transplant by providing immunosuppressive drug coverage under Medicare Part B for certain individuals. Under current rules, an individual loses Medicare coverage 36 months after a successful transplant (unless they are otherwise entitled to the coverage), but it does not negate the need for an individual to take immunosuppressive drugs long-term. Not having coverage for immunosuppressive drugs can cause individuals to reduce their usage in order to make their medication last longer or they may stop taking the medications entirely which can lead to organ rejection and transplant failure. The new Part B–ID benefit helps remedy

[39] CMS–40–D became obsolete in 3/2022.

[40] CMS–40–F became obsolete in 2008.

[41] *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/.*

this situation by ensuring that these individuals have access to immunosuppressive drug coverage potentially for the rest of their life. Even with access to immunosuppressive drug benefits, low-income individuals may be unable to afford these immunosuppressive drugs due to their high cost. By extending certain MSP programs to this new Part B–ID benefit, States will cover the costs of the Part B–ID premiums and in some cases, cost sharing as well. In particular, this MSP Part B–ID coverage will help individuals who lose Medicare coverage 36 months after a successful transplant and live in a non-expansion State with income too high to receive subsidies for purchasing a health plan in the Exchange. Without this MSP Part B–ID coverage, these individuals may be unable to pay Part B–ID premiums and cost sharing and as such, at higher risk of transplant failure. As such, supporting continued Medicaid coverage is consistent with the *Executive Order on Strengthening Medicaid and the Affordable Care Act* and the *Executive Order on Continuing to Strengthen Americans' Access to Affordable Quality Health Coverage.*

In addition to implementing various sections of the CAA, we sought to modernize the Medicare Savings Programs through which States cover Medicare premiums and cost sharing and updated the various federal regulations that affect a State's payment of Medicare Part A and B premiums for beneficiaries enrolled in the Medicare Savings Programs and other Medicaid eligibility groups. We believe that it is important to update these policies to reflect statutory changes over the last 3-plus decades as well as to codify certain administrative practices that have evolved over the years. We anticipated our proposals would also advance health equity by improving low income individuals' access to continuous, affordable health coverage and use of needed health care consistent with the *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.* We also expected that our proposals would improve the customer service experience of dually eligible beneficiaries consistent with the goals of the *Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.* These are commonsense, good government proposals that would also reduce administrative burden on States and promote transparency and clarity regarding State payment of premiums or buy-in.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). These final regulations are not economically significant within the meaning of section 3(f)(1) of Executive Order 12866. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order. Therefore, OMB has reviewed these regulations, and the Department has provided the following assessment of their impact.

The RFA requires agencies to analyze options for regulatory relief of small entities if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $8.0 million to $41.5 million annually. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on a substantial number of small entities. This rule's costs will predominantly fall on the Federal government and States, and the associated burden falls primarily on the Federal government and individuals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2022, that threshold is approximately $165 million. This final rule will not result in expenditures that meet or exceed this amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule will not have a substantial direct effect on state or local governments.

C. Detailed Economic Analysis

1. Beneficiary Enrollment Simplification (§§ 406.22 and 407.23)

We are revising regulations to implement section 120 of the CAA. These revisions make the effective date of coverage the first of the month following an individual's enrollment during their IEP or during the GEP. We are also establishing SEPs that will provide individuals who meet certain exceptional conditions an opportunity to enroll without having to wait for the GEP.

a. Benefits

The changes to the IEP and GEP coverage dates provide Medicare beneficiaries access to coverage more quickly and may allow them faster access to needed medical care. The new SEPs for beneficiaries who have experienced an exceptional condition that caused them to delay enrollment in

Medicare also provide access to Medicare coverage earlier, reducing gaps in coverage, and beneficiaries may avoid LEPs by utilizing these SEPs.

b. Costs

Costs include increased months of coverage provided by the new SEPs and the earlier effective dates for the IEP and GEP and potential loss of LEP revenue. As detailed earlier, we estimate that approximately 31,449 individuals would be eligible to enroll earlier using the exceptional condition SEPs.

In addition, CMS does not foresee an increase of costs to Medicare beneficiaries related to Part B premium increases. Specifically, we do not expect beneficiaries enrolling under these new provisions to have higher-than-average costs, so we assume this provision will not have an impact on the Part B premium.

c. Transfers

The CAA also modified section 1839(b) of the Act to exempt individuals who enroll pursuant to an SEP for exceptional conditions established under section 1838(m) of the Act, from paying an LEP. Therefore, beneficiaries who are able to utilize the newly established SEPs will benefit from an avoidance of an LEP. Based on the data described in section III B.1 of this final rule, we estimate approximately 31,449 premium Part A and Part B enrollments annually under the new SEPs. We anticipate that the loss of revenue associated with LEP and the additional months of coverage associated with individuals using the new SEPs will be a cost to the Medicare Trust Fund. Due to variables that CMS cannot predict, such as the timing of when beneficiaries will use an SEP to enroll in Medicare or what their LEP would have been had the SEP not been made available, CMS is not able to estimate an exact cost to the Trust Funds that will result from enrolling beneficiaries through SEPs. However, based on the small number of beneficiaries impacted, and because this rule allows that individuals will have to miss an enrollment period in order to access these new SEPs, we expect the increased costs to the Medicare to be negligible, even considering the modifications to the SEPs in the final rule as we believe these changes will have a negligible impact on the use of the new exceptional conditions SEPs. Further, we note the beneficiaries who are enrolled via these SEPs would be paying premiums to the Trust Fund, which would be revenue that might have otherwise gone uncollected.

2. Extended Months of Coverage of Immunosuppressive Drugs for Kidney Transplant Patients (§§ 407.1, 407.55, 407.57, 407.59, 407.62, 407.65, 408.20, and 423.30)

We are revising regulations that would establish the new Part B–ID benefit. These regulations would establish the eligibility requirements (including the requirement that the individual attest that they do not have other disqualifying health coverage), the reasons and process for termination of coverage, and the basis for the premium for the benefit.

a. Benefits

The American Society of Nephrology and the HHS Assistant Secretary for Planning and Evaluation report that providing beneficiaries with extended access to immunosuppressive drugs may reduce any associated costs they face from kidney failure, including maintaining labor force participation and improved quality of life.[42]

b. Costs

Extending immunosuppressive drug coverage will pose an additional cost to Medicare to pay for the additional drugs, reduced by the savings associated with reduction in reversion to dialysis from graft failure. CMS actuaries estimate a net cost of $55 million to the Medicare program over the period 2022–2031. This estimate was provided by CMS actuaries, based on historical information from SSA. SSA's data shows that roughly 165,000 individuals had prior Medicare Part A coverage and had a kidney transplant between 2001 and 2019. Removing any individuals not currently alive or enrolled in Medicare Part A, within SSA's historical data approximately 52,000 individuals would remain potentially eligible to enroll in Part B–ID. In addition, CMS assumes approximately 1,000 individuals a month will be disenrolled from Medicare Part A 36 months after a successful transplant. After accounting for those individuals who are anticipated to have other coverage, and thus would not be eligible for the Part B–ID benefit, we assume that of those who were terminated from Part A after a successful transplant between 2001 and 2019, roughly 1,050 individuals would initially be enrolled in the Part B–ID benefit. Using similar assumptions about other coverage and those that are newly eligible for the benefit (roughly 12,000 individuals in a year), we assume an estimated growth of 250 enrollees each year thereafter. Beneficiaries will also incur potential costs associated with the premium associated with the additional benefit. For beneficiaries enrolled in MSPs for coverage of premiums and cost sharing of the Part B–ID benefit, States will incur premium and cost sharing costs for the benefit as well as costs associated with systems and other changes needed for reporting enrollment in these MSPs as described in further detail elsewhere in this document.

The following table titled Part B–ID Benefit Costs and Savings Estimate demonstrates the year by year amounts, broken out by cost for drugs and savings.

TABLE 4—PART B–ID BENEFIT COSTS AND SAVINGS ESTIMATE

[in $ millions]

FY	Cost due to drugs	Savings due to saved transplants	Total gross benefits	Part B premium offset	Net impact
2022	0	0	0	0	0
2023	0	0	0	0	0
2024	5	0	5	0	5
2025	5	0	5	0	5
2026	5	0	5	0	5
2027	5	0	5	0	5
2028	10	0	10	−5	5

[42] Kadatz, M., Gill, J. S., Gill, J., Formica, R. N., and Klarenbach, S. (2019). Economic Evaluation of Extending Medicare Immunosuppressive Drug Coverage for Kidney Transplant Recipients in the Current Era. Journal of the American Society of Nephrology, 31(1), 218–228. *https://doi.org/10.1681/asn.2019070646.* See *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/189276/Savings_From_Extending_Coverage_For_Immunosuppressive_Drugs_Final.pdf* from ASPE discussing cost benefits of extending drug coverage.

TABLE 4—PART B–ID BENEFIT COSTS AND SAVINGS ESTIMATE—Continued

[in $ millions]

FY	Cost due to drugs	Savings due to saved transplants	Total gross benefits	Part B premium offset	Net impact
2029	10	0	10	0	10
2030	10	0	10	0	10
2031	15	0	15	−5	10

c. Effects of Medicare Saving Programs Coverage for Immunosuppressive Drugs

As described previously, under section 402(f) of the CAA, we proposed to modify three MSP eligibility groups (QMB, SLMB, and QI) to pay premiums and, if applicable, cost sharing for low-income beneficiaries enrolled in the Part B–ID benefit (MSP Part B–ID). Individuals currently enrolled as QMBs, SLMBs, and QIs must meet income and resource requirements in addition to having entitlement to Medicare Part A. With this change, individuals may enroll in QMB, SLMB, and QI for the Part B–ID benefit if they are enrolled in the Part B–ID benefit and meet the underlying income and resource requirements for QMB, SLMB, or QI. While States pay Medicare Part A and B premiums and cost sharing for certain MSP eligibility groups, State payment for the MSP Part B–ID benefit is limited to Part B–ID benefit premiums and/or cost sharing.

As discussed in more detail in section II.B.3 of this final rule, due to the limited scope of Part B–ID benefit entitlement and the income and resource eligibility limits for the MSP population, we anticipated enrollment in the MSP Part B–ID benefit mainly occurring in the 12 non-expansion States among individuals who qualify as QMBs, with about 250 people a year enrolling and 1,000 people enrolling initially. We estimated the cost of paying for the Part B–ID benefit for these individuals across all States was −$657,000 (1,250 × (State portion of premium (Part B–ID benefit premium ($1,200) × States' average FMAP rate) (1–0.562)) + State portion of Part B–ID benefit cost sharing (20 percent of cost of CMS actuarial estimate of immunosuppressive drug therapy ($8,000 × 0.2) × States' average FMAP rate (1 − 0.562) − Medicaid drug rebate of 50 percent of cost of immunosuppressive drug therapy ($8,000 × 0.5) × States' average FMAP rate (1 − 0.562). In sum, we estimated the drug rebate more than offsetting the State share of the Part B–ID benefit premium and cost sharing obligations, yielding a net savings for States.

In addition to the liability for the Part B–ID benefit premium and cost sharing, we estimated States would need to perform the following tasks: (1) modify their systems to report MSP Part B–ID benefit enrollment on the Third Party Systems (TPS) files; (2) modify their internal systems to receive and process new values in existing fields for Part B–ID benefit enrollment in the MMA file, TPS, Territories and States Beneficiary Query (TBQ), T–MSIS, as well as on SSA's state data exchanges; (3) process the change in the premium from the Part B standard premium to the Part B–ID benefit premium in TPS for billing; (4) modify their process to query SSA systems to confirm Part B–ID benefit enrollment prior to enrolling in the MSP Part B–ID benefit; (5) adjust Medicaid eligibility systems to include new MSP Part B–ID benefit enrollment codes; and (6) adjust Medicaid pharmacy claims to include this new Part B–ID benefit crossover claim. We anticipated all States would need to make systems changes and test these systems changes 4–6 months prior to implementation.

We estimated that it would take a maximum of 12 months of work (approximately 2,000 hours) by three computer programmers working $92.92/hr to make the necessary systems changes. Since we estimated that 50 states plus the District of Columbia (DC)[43] will need to make a plan for system changes, we projected an aggregate burden of $12,510,748.8 (51 (50 States and DC) * 2,000 hr * $92.92/hr * 3 * States' average FMAP rate). We noted that the cost and time attributable to these systems change would be influenced by whether the state is implementing other systems changes at the same time and their current Medicaid Management Information System (MMIS) system functionality. Assuming the state implements this change in isolation, we estimated that this change could take 12 months. However, if a State makes this change as a part of a broader systems update, the work specific to the proposal could be less burdensome.

We did not receive any comments on these estimates and are finalizing as proposed.

3. Simplifying Regulations Related to Medicare Enrollment Forms

We are revising §§ 406.7 and 407.11 to remove references to specific enrollment forms that are used to apply for entitlement under Medicare Part A and enrollment under Medicare Part B. This is an administrative change that will not impact the use of the forms. We do not anticipate a change in burden or cost associated with each of the forms.

4. Modernizing State Payment of Medicare Premiums Benefits, Costs, and Transfers

To modernize State payment of Medicare premiums, we proposed several changes to regulations at §§ 400.200, 406.21, 406.26, 407.40 through 48, and 431.625. We also proposed to add new §§ 435.123 through 435.126 and to revise § 435.4. Almost all of the proposed changes were to update the regulations to reflect statutory changes over the last 3-plus decades, and to codify certain administrative practices that have evolved over the years. Some of the most significant changes included replacing obsolete decades-old stand-alone buy-in agreements with treating buy-in provisions in the State plan as the State's buy-in agreement, and limiting retroactive Medicare Part B premium liability for States for full-benefit dually eligible beneficiaries. We did not project any impact for these provisions in this Regulatory Impact Analysis section because our proposals were consistent with current requirements and practice.

We did not receive any comments on these estimates and are finalizing as proposed.

D. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this final rule, we should estimate the cost associated with regulatory review. Due

[43] We note that we did not estimate impacts for the territories because currently, they have not elected MSP coverage for their residents. As such, they would not need to make these changes.

to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the proposed rule will be the number of reviewers of this final rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this rule. It is possible that not all commenters reviewed the proposed rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. We welcomed any public comments on the approach in estimating the number of entities that would review the proposed rule. We did not receive any public comments specific to our solicitation.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of the proposed rule, and therefore for the purposes of our estimate we assumed that each reviewer reads approximately 50 percent of the rule. We sought public comments on this assumption. We did not receive any public comments specific to our solicitation.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $115.22/hr, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it will take approximately 0.5 hours for the staff to review half of this final rule. For each entity that reviews the rule, the estimated cost is $57.61 (0.5 hours × $115.22/hr). Therefore, we estimate that the total cost of reviewing this rule is $4,032.70 ($57.61 × 70) [*70 is the number of estimated reviewers*].

E. Alternatives Considered

As noted previously, there were a number of additional SEPs that were considered but were not pursued for various reasons (discussed in greater length in section II.A.2.f of the preamble). For example, we considered an SEP for individuals who previously decided not to enroll in Medicare but now want to enroll outside of the GEP or other enrollment period because they are experiencing a health event and want Medicare coverage. We also considered an SEP for individuals who lost Medicare coverage solely due to non-payment of premiums who are not eligible for another SEP or equitable relief and now want to re-enroll outside of the GEP.

In addition, we considered finalizing the SEPs as proposed rather than making the changes based on comments in this final rule. Specifically, we considered keeping the SEP for individuals impacted by an emergency or disaster to only apply if the individual themselves were impacted rather than allowing them to qualify if they are prevented from enrolling in Medicare because the person who helps them make health care decisions resides in area where there is a federal, state, or local disaster declaration. In addition, we considered finalizing the SEP for Health Plan or Employer Error as proposed rather than modifying it to allow an individual to qualify for the SEP if they received erroneous or misinformation from agents and brokers in addition to health plans and employers and to provide a written attestation of the error. Finally, we considered maintaining the 6-month duration for the SEP for Formerly Incarcerated Individuals rather than changing the duration to 12 months and not allowing the option to choose retroactive or prospective coverage. Had we finalized these SEPs as proposed, we estimate that slightly fewer individuals would be able to enroll using the exceptional conditions SEPs, as each of the changes in this final rule will ease access to the SEPs either through increasing the timeframe or opportunities to qualify for the SEPs.

Further, we proposed several alternatives to the State payment of Medicare premium policies and technical changes, which are described at 87 FR 25112 through 25122. For example, we considered alternatives to further reduce the number of Part B buy-in groups from three to two and to limit buy-in liability for States in other situations in which Medicare benefits are not available, such as incarceration and beneficiaries who reside overseas. In addition, we considered proposing limits on State premium liability for time periods longer or shorter than 36 months, including a range from 24 to 60 months. Based on CMS data from 2022, an average of about 147,000 Medicaid beneficiaries are newly enrolled in Part B buy-in each month. Over a 6-month period, an average of 2,244 Medicaid beneficiaries per month were retroactively enrolled in Part B buy-in for more than 12 months, 1,138 were retroactively enrolled for more than 24 months, 720 were retroactively enrolled for more than 36 months, 517 were retroactively enrolled for more than 48 months, and 393 were retroactively enrolled for more than 60 months.

D. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), we have prepared an accounting statement in Table 5 showing the classification of the impact associated with the provisions of this final rule.

TABLE 5—ACCOUNTING STATEMENT

[in $ millions]

Category	Estimate at 7% (in 2022 dollars)	Estimate at 3% (in 2022 dollars)	Period	Affected stakeholders
Annualized Monetized Savings	$0	$0	2022–2031	Federal government, States.
Annualized Monetized Cost	0.39	0.06	2022–2031	Federal government, States.

This final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on October 17, 2022.

List of Subjects

42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMO) Medicaid,

Medicare Reporting, and recordkeeping requirements.

42 CFR Part 406

Health facilities, Diseases, and Medicare.

42 CFR Part 407

Medicare.

42 CFR Part 408

Medicare.

42 CFR Part 410

Diseases, Health facilities, Health professions, Laboratories, Medicare, Reporting and, recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Health professionals, Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), and Wages.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

■ 1. Effective January 1, 2023, the authority citation for part 400 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh and 44 U.S.C. Chapter 35.

■ 2. Effective January 1, 2023, § 400.200 is amended by—

■ a. Adding a definition for ''Medicare Savings Programs'' in alphabetical order;

■ b. Revising the definition of ''Qualified Medicare Beneficiary''; and

■ c. Adding definitions for ''Qualifying Individual'' in alphabetical order and ''Specified Low-Income Medicare Beneficiary'' in alphabetical order.

The additions and revision read as follows:

§ 400.200 General definitions.

* * * * *

Medicare Savings Programs (MSPs) has the same meaning described in § 435.4 of this chapter.

* * * * *

Qualifying Individual (QI) means an individual described in § 435.125 of this chapter.

Qualified Medicare Beneficiary (QMB) means an individual described in § 435.123 of this chapter.

* * * * *

Specified Low-Income Medicare Beneficiary (SLMB) means an individual described in § 435.124 of this chapter.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

■ 3. Effective January 1, 2023, the authority citation for part 406 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395i–2, 1395i–2a, 1395p, 1395q and 1395hh.

■ 4. Effective January 1, 2023, § 406.7 is revised to read as follows:

§ 406.7 Forms to apply for entitlement under Medicare Part A.

Forms used to apply for Medicare entitlement are available free of charge by mail from CMS or at any Social Security branch or district office or online at the CMS and SSA websites. An individual who files an application for monthly social security cash benefits as defined in § 400.200 of this chapter also applies for Medicare entitlement if he or she is eligible for hospital insurance at that time.

■ 5. Effective January 1, 2023, § 406.13 is amended by revising paragraph (f)(2) to read as follows:

§ 406.13 Individual who has end-stage renal disease.

* * * * *

(f) * * *

(2) The end of the 36th month after the month in which the individual received a kidney transplant. Beginning January 1, 2023, an individual who is no longer entitled to Part A benefits due to this paragraph may be eligible to enroll in Part B solely for purposes of coverage of immunosuppressive drugs as described in § 407.55 of this subchapter.

* * * * *

■ 6. Effective January 1, 2023, § 406.21 is amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 406.21 Individual enrollment.

(a) *Basic provision.* An individual who meets the requirements of § 406.20(b) or (c), except as provided in § 406.26(b)(2), may enroll for premium hospital insurance only during his or her—

(1) Initial enrollment period as set forth in paragraph (b) of this section;

(2) A general enrollment period as set forth in paragraph (c) of this section;

(3) A special enrollment period as set forth in §§ 406.24, 406.25, and 406.27; or

(4) For HMO/CMP enrollees, a transfer enrollment period as set forth in paragraph (f) of this section.

* * * * *

(c) * * *

(3) If the individual enrolls or reenrolls during a general enrollment period—

(i) Before January 1, 2023, his or her entitlement begins on July 1 of the calendar year; or

(ii) On or after January 1, 2023, his or her entitlement begins on the first day of the month after the month of enrollment.

* * * * *

■ 7. Effective January 1, 2023, § 406.22 is amended by—

■ a. Removing the phrase ''age 65, the following rules apply:'' and adding in its place the phrase ''age 65, before January 1, 2023, the following rules apply:'' in paragraph (a) introductory text;

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding a new paragraph (b);

■ d. Revising newly redesignated paragraph (c) introductory text; and

■ e. Adding paragraph (d).

The additions and revision read as follows:

§ 406.22 Effect of month of enrollment on entitlement.

* * * * *

(b) *Individual age 65 or over.* For an individual who has attained age 65 on or after January 1, 2023, the following rules apply:

(1) If the individual enrolls during the first 3 months of their initial enrollment period, entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the last 4 months of their initial enrollment period, entitlement begins with the month following the month of enrollment.

(c) *Individual under age 65.* For an individual who has not attained age 65 and who satisfies the requirements of § 406.20(c) before January 1, 2023, the following rules apply:

* * * * *

(d) *Individual under age 65.* For an individual who has not attained age 65 and who first satisfies the requirements of § 406.20(c) on or after January 1, 2023, the following rules apply:

(1) For individuals who enroll during the first 3 months of their IEP,

entitlement begins with the first month of eligibility.

(2) If an individual enrolls during the month in which they first become eligible or any subsequent month of their IEP, entitlement begins with month following the month of enrollment.

■ 8. Effective January 1, 2023, § 406.26 is amended by adding paragraph (a)(3) and revising paragraph (b)(2) to read as follows:

§ 406.26 Enrollment under State buy-in.

(a) * * *

(3) *Enrollment without discrimination.* A State that has a buy-in agreement in effect must enroll in premium health insurance any applicant who meets the eligibility requirement for the QMB eligibility group, with the State paying the premiums on the individual's behalf.

(b) * * *

(2) The first month in which the individual is entitled to premium hospital insurance under § 406.20(b) and has QMB status. Under a State buy-in agreement, as defined in § 407.40 of this subchapter, QMB-eligible individuals can enroll in premium hospital insurance at any time of the year, without regard to Medicare enrollment periods.

* * * * *

■ 9. Effective January 1, 2023, § 406.27 is added to read as follows:

§ 406.27 Special enrollment periods for exceptional conditions.

(a) *General rule.* Beginning January 1, 2023, in accordance with the Secretary's authority in sections 1837(m) and 1838(g) of the Act, the following SEPs, as defined under § 406.24(a)(4), are provided for individuals that missed a Medicare enrollment period, (as specified in § 406.21, § 406.24, or § 406.25), due to exceptional conditions as determined by the Secretary and established under paragraphs (b) through (f) of this section. SEPs are provided for exceptional conditions that took place on or after January 1, 2023 except as specified in paragraph (e) of this section.

(b) *Special enrollment period for individuals impacted by an emergency or disaster.* An SEP exists for individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by a Federal, State, or local government entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they (or their SSA-authorized representative as defined at 42 CFR 405.910), their legal guardian, or person who makes healthcare decisions on behalf of that individual reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual (or the individual's authorized representative, legal guardian, or person who makes healthcare decisions on behalf of that individual) must demonstrate that they reside (or resided) in the area during the period covered by that declaration.

(2) *SEP duration.* The SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration. The SEP ends 6 months after the end date identified in the declaration, the end date of any extensions or the date when the declaration has been determined to have ended or has been revoked, if applicable.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(c) *Special enrollment period for individuals affected by a health plan or employer misrepresentation.* An SEP exists for individuals whose non-enrollment in premium Part A is unintentional, inadvertent, or erroneous and results from misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, agents or brokers of health plans, or any person authorized to act on behalf of such entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they can demonstrate (by documentation or written attestation) both of the following:

(i) He or she did not enroll in premium Part A during another enrollment period in which they were eligible based on information received from an employer or GHP, agents or brokers of health plans, or any person authorized to act on such organization's behalf.

(ii) An employer, GHP, agent or broker of a health plan, or their representative materially misrepresented information or provided incorrect information relating to enrollment in premium Part A.

(2) *SEP duration.* This SEP begins the day the individual notifies SSA of the employer or GHP misrepresentation and ends 6 months later.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(d) *SEP for formerly incarcerated individuals.* An SEP exists for Medicare eligible individuals who are released from the custody of penal authorities as described in § 411.4(b) of this subchapter on or after January 1, 2023.

(1) *SEP parameters.* An individual is eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in Medicare premium Part A due to being in custody of penal authorities and there is a record of release either through discharge documents or data available to SSA.

(2) *SEP duration.* The SEP starts the day of the individual's release from the custody of penal authorities and ends the last day of the 12th month after the month in which the individual is released from the custody of penal authorities.

(3) *Entitlement*—(i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(ii) *Special rule.* An individual has the option of requesting entitlement retroactive to the month of their release from incarceration provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31). The retroactive period cannot exceed 6 months.

(e) *Special enrollment period for termination of Medicaid coverage.* An SEP exists for individuals whose Medicaid eligibility is terminated.

(1) *SEP parameters.* An individual is eligible for this SEP if they can demonstrate that—

(i) They are eligible for premium Part A under § 406.5(b); and

(ii) Their Medicaid eligibility is terminated on or after January 1, 2023, or is terminated after the last day of the Coronavirus Disease 2019 public health emergency (COVID–19 PHE) as determined by the Secretary, whichever is earlier.

(2) *SEP duration.* If the termination of Medicaid eligibility occurs—

(i) After the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023.

(ii) On or after January 1, 2023, the SEP starts when the individual is notified of termination of Medicaid eligibility and ends 6 months after the termination of eligibility.

(3) *Entitlement*—(i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is after the last day of the COVID–19 PHE or on after January 1, 2023, whichever is earlier.

(ii) *Special COVID–19 PHE rule.* An individual whose Medicaid eligibility is terminated after the end of the COVD–19 PHE, but before January 1, 2023 (if applicable), has the option of requesting

that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31).

(iii) *Other special rule.* After January 1, 2023, an individual has the option of requesting entitlement for a retroactive period back to the date of termination from Medicaid provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31).

(4) *Effect on previously accrued late enrollment penalties.* Individuals who otherwise would be eligible for this SEP, but enrolled during the COVID–19 PHE prior to January 1, 2023, are eligible to have late enrollment penalties collected under § 406.32(d) reimbursed and ongoing penalties removed.

(f) *Special enrollment period for other exceptional conditions.* An SEP exists for other exceptional conditions as CMS may provide.

(1) *SEP parameters.* An individual is eligible for the SEP if both of the following apply:

(i) The individual demonstrates that they missed an enrollment period in which they were eligible because of an event or circumstance outside of the individual's control which prevented them from enrolling in premium Part A.

(ii) It is determined that the conditions were exceptional in nature.

(2) *SEP duration.* The SEP duration is determined on a case-by-case basis, but will be no less than 6 months.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

■ 10. Effective January 1, 2023, § 406.33 is amended by—

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (c) as paragraph (d); and

■ c. Adding new paragraph (c).

The revision and addition read as follows:

§ 406.33 Determination of months to be counted for premium increase: Enrollment.

(a) *Enrollment before April 1, 1981 or after September 30, 1981 and before January 1, 2023.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the general enrollment period, the special enrollment period, or the transfer enrollment period in which the individual enrolls, excluding the following:

* * * * *

(c) *Enrollment on or after January 1, 2023.* The months to be counted for premium increase are the months from the end of the initial enrollment period through the end of the month in which the individual enrolls, excluding both of the following:

(1) The months described in paragraphs (a)(1) through (6) of this section.

(2) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 406.27 provided the individual enrolls within the duration of the SEP.

* * * * *

■ 11. Effective January 1, 2023, § 406.34 is amended by—

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (e) as paragraph (f); and

■ c. Adding new paragraph (e).

The revision and addition read as follows:

§ 406.34 Determination of months to be counted for premium increase: Reenrollment.

(a) *First reenrollment before April 1, 1981 or after September 30, 1981 and before January 1, 2023.* The months to be counted for premium increase are:

* * * * *

(e) *Reenrollments on or after January 1, 2023.* (1) The months to be counted for premium increase are as follows:

(i) The months specified in § 406.33(c).

(ii) The months specified in paragraphs (b) and (d) of this section (if applicable).

(iii) The months from the end of the first period of entitlement through the end of the month during the general enrollment period in which the individual reenrolled.

(2) The months excluded from premium increase are the months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 406.27, provided the individual enrolls within the duration of the SEP.

* * * * *

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

■ 12. Effective January 1, 2023, the authority citation for part 407 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1395p, 1395q, and 1395hh.

■ 13. Effective January 1, 2023, § 407.1 is amended by adding paragraph (a)(6) and revising paragraph (b) to read as follows:

§ 407.1 Basis and scope.

(a) * * *

(6) Sections 1836(b) and 1837(n) of the Act provide for coverage of immunosuppressive drugs as described in section 1861(s)(2)(J) of the Act under Part B beginning on or after January 1, 2023, for eligible individuals whose benefits under Medicare Part A and eligibility to enroll in Part B on the basis of ESRD would otherwise end with the 36th month after the month in which the individual receives a kidney transplant by reason of section 226A(b)(2) of the Act.

(b) *Scope.* This part sets forth the eligibility, enrollment, and entitlement requirements and procedures for the following:

(1) Supplementary medical insurance. (The rules about premiums are in part 408 of this chapter.)

(2) The immunosuppressive drug benefit provided for under sections 1836(b) and 1837(n) of the Act, hereinafter referred to as the Part B-Immunosuppressive Drug Benefit (Part B–ID).

■ 14. Effective January 1, 2023, § 407.11 is revised to read as follows:

§ 407.11 Forms used to apply for enrollment under Medicare Part B.

Forms used to apply for enrollment under the supplementary medical insurance program are available free of charge by mail from CMS, or at any Social Security branch or district office and online at the CMS and SSA websites. As an alternative, the individual may request enrollment by signing a simple statement of request, if he or she is eligible to enroll at that time.

■ 15. Effective January 1, 2023, § 407.23 is added to read as follows:

§ 407.23 Special enrollment periods for exceptional conditions.

(a) *General rule:* Beginning January 1, 2023, in accordance with the Secretary's authority in sections 1837(m) and 1838(g) of the Act, the following SEPs, as defined under § 406.24(a)(4) of this subchapter, are provided for individuals who missed a Medicare enrollment period (as specified in § 407.21, § 407.15 or § 407.20 of this subchapter) due to exceptional conditions as determined by the Secretary and established under paragraphs (b) through (f) of this section. SEPs are provided for exceptional conditions that took place on or after January 1, 2023 except as specified in paragraph (e) of this section.

(b) *Special enrollment period for individuals impacted by an emergency or disaster.* An SEP exists for

individuals prevented from submitting a timely Medicare enrollment request by an emergency or disaster declared by a Federal, State, or local government entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they (or their SSA-authorized representative as defined at 42 CFR 405.910), their legal guardian, or the person who makes healthcare decisions on behalf of that individual, reside (or resided) in an area for which a Federal, State or local government entity newly declared a disaster or other emergency. The individual (or the individual's authorized representative, legal guardian, or the person who makes healthcare decisions on behalf of that individual) must demonstrate that they reside (or resided) in the area during the period covered by that declaration.

(2) *SEP duration.* The SEP begins on the earlier of the date an emergency or disaster is declared or, if different, the start date identified in such declaration. The SEP ends 6 months after the end date identified in the declaration, the end date of any extensions or the date when the declaration has been determined to have ended or has been revoked, if applicable.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(c) *Special enrollment period for individuals affected by a health plan or employer misrepresentation.* An SEP exists for individuals whose non-enrollment in SMI is unintentional, inadvertent, or erroneous and results from misrepresentation or reliance on incorrect information provided by the individual's employer or GHP, agents or brokers of health plans, or any person authorized to act on behalf of such entity.

(1) *SEP parameters.* An individual is eligible for the SEP if they can demonstrate (by documentation or written attestation) the both of the following:

(i) He or she did not enroll in SMI during another enrollment period in which they were eligible based on information received from an employer or GHP, agents or brokers of health plans, or any person authorized to act on such organization's behalf.

(ii) An employer, GHP, agent or broker of a health plan, or their representative materially misrepresented information or provided incorrect information relating to enrollment in SMI.

(2) *SEP duration.* This SEP begins the day the individual notifies SSA of the employer or GHP misrepresentation, or the incorrect information provided and ends 6 months later.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

(d) *SEP for formerly incarcerated individuals.* An SEP exists for Medicare eligible individuals who are released from the custody of penal authorities as described in § 411.4(b) of this subchapter on or after January 1, 2023.

(1) *SEP parameters.* An individual is eligible for this SEP if they demonstrate that they are eligible for Medicare and failed to enroll or reenroll in SMI due to being in custody of penal authorities, and there is a record of release either through discharge documents or data available to SSA.

(2) *SEP duration.* The SEP starts the day of the individual's release from the custody of penal authorities and ends the last day of the 12th month after the month in which the individual is released from the custody of penal authorities.

(3) *Entitlement*—(i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on after January 1, 2023.

(ii) *Special rule.* An individual has the option of requesting entitlement for a retroactive period of up to 6 months provided the date does not precede release from incarceration and the individual pays the monthly premiums for the period of coverage (as required under § 406.31). If the application is filed within the first 6 months of the SEP, the effective date is retroactive to the date of their release from incarceration. If the application is filed in the last 6 months of the SEP, the coverage effective date is retroactive to 6 months after the date of release from incarceration.

(e) *Special enrollment period for termination of Medicaid coverage.* An SEP exists for individuals whose Medicaid eligibility is terminated.

(1) *SEP parameters.* An individual is eligible for this SEP if they can demonstrate that—

(i) They are eligible for Part B under § 407.4(a); and

(ii) Their Medicaid eligibility is being terminated on or after January 1, 2023, or after the last day of the Coronavirus Disease 2019 public health emergency (COVID–19 PHE) as determined by the Secretary, whichever is earlier.

(2) *SEP duration.* If the termination of Medicaid eligibility occurs—

(i) After the last day of the COVID–19 PHE and before January 1, 2023, the SEP starts on January 1, 2023 and ends on June 30, 2023.

(ii) On or after January 1, 2023, the SEP starts when the individual is notified of termination of Medicaid eligibility and ends 6 months after the termination of eligibility.

(3) *Entitlement*—(i) *General rule.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is the month following the last month of the COVID–19 PHE or on or after January 1, 2023, whichever is earlier.

(ii) *Special COVID–19 PHE rule.* An individual whose Medicaid eligibility is terminated after the end of the COVD–19 PHE, but before January 1, 2023 (if applicable), has the option of requesting that entitlement begin back to the first of the month following termination of Medicaid eligibility provided the individual pays the monthly premiums for the period of coverage (as required under part 408 of this subchapter).

(iii) *Other special rule.* After January 1, 2023, an individual has the option of requesting entitlement for a retroactive period back to the date of termination from Medicaid provided the individual pays the monthly premiums for the period of coverage (as required under § 406.31 of this subchapter).

(4) *Effect on previously accrued late enrollment penalties.* Individuals who otherwise would be eligible for this SEP, but enrolled during the COVID–19 PHE prior to January 1, 2023, are eligible to have late enrollment penalties collected under § 408.22 of this subchapter reimbursed and ongoing penalties removed.

(f) *Special enrollment period for other exceptional conditions.* An SEP exists for other exceptional conditions as CMS may provide.

(1) *SEP parameters.* An individual is eligible for the SEP if both of the following apply:

(i) The individual demonstrates that they missed an enrollment period in which they were eligible because of an event or circumstance outside of the individual's control which prevented them from enrolling in SMI.

(ii) It is determined that the conditions were exceptional in nature.

(2) *SEP duration.* The SEP duration is determined on a case by case basis, but will be no less than 6 months.

(3) *Entitlement.* Entitlement begins the first day of the month following the month of enrollment, so long as the date is on or after January 1, 2023.

■ 16. Effective January 1, 2023, § 407.25 is amended by revising paragraphs (a) and (b)(1) and (3) to read as follows:

§ 407.25 Beginning of entitlement: Individual enrollment.

* * * * *

(a) *Enrollment during initial enrollment period.* For individuals who first meet the eligibility requirements of § 407.10 in a month beginning—

(1) Before January 1, 2023, the following entitlement dates apply:

(i) If an individual enrolls during the first 3 months of the initial enrollment period, entitlement begins with the first month of eligibility.

(ii) If an individual enrolls during the fourth month of the initial enrollment period, entitlement begins with the following month.

(iii) If an individual enrolls during the fifth month of the initial enrollment period, entitlement begins with the second month after the month of enrollment.

(iv) If an individual enrolls in either of the last 2 months of the initial enrollment period, entitlement begins with the third month after the month of enrollment.

(v) For example, if an individual first meets the eligibility requirements for enrollment in April, then the individual's initial enrollment period is January through July. The month in which the individual enrolls determines the month that begins the period of entitlement, as follows:

TABLE 1 TO PARAGRAPH (a)(1)(v)

Enrolls in initial enrollment period	Entitlement begins on—
January	April 1 (month eligibility requirements first met).
February	April 1.
March	April 1.
April	May 1 (month following month of enrollment).
May	July 1 (second month after month of enrollment).
June	September 1 (third month after month of enrollment).
July	October 1 (third month after month of enrollment).

(2) On or after January 1, 2023, the following entitlement dates apply:

(i) If an individual enrolls during the first 3 months of the initial enrollment period, entitlement begins with the first month of eligibility.

(ii) If an individual enrolls during the last 4 months of the initial enrollment period, entitlement begins with the month following the month in which they enroll.

(b) * * *

(1) If an individual enrolls or reenrolls during a general enrollment period before April 1, 1981, or after September 30, 1981 and before January 1, 2023, entitlement begins on July 1 of that calendar year.

* * * * *

(3) If an individual enrolls or reenrolls during a general enrollment period on or after January 1, 2023, entitlement begins on the first day of the month following the month in which they enroll.

* * * * *

■ 17. Effective January 1, 2023, § 407.40 is amended—

■ a. By ading paragraphs (a)(6) through (10);

■ b. By revising paragraph (b) introductory text;

■ c. In paragraph (b) by—

■ i. Adding a definition for ''1634 State'' in alphanumerical order;

■ ii. Revising the definition of ''AFDC'';

■ iii. Adding a definition for ''Buy-in group'' in alphabetical order;

■ iv. Redesignating the definition of ''Cash assistance'' in alphabetical order;

■ v. Removing the definition of ''Qualified Medicare Beneficiary'';

■ vi. Redesignating the definition of ''Railroad retirement beneficiary'' in alphabetical order; and

■ vii. Revising the definition of ''State buy-in agreement or buy-in agreement'';

■ d. By revising paragraph (c)(1); and

■ e. By adding paragraphs (c)(5) and (6).

The additions and revisions read as follows:

§ 407.40 Enrollment under a State buy-in agreement.

(a) * * *

(6) Section 4501 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) established the Specified Low-Income Medicare Beneficiary or SLMB eligibility group effective January 1993.

(7) Section 4732 of the Balanced Budget Act of 1997 (Pub. L. 105–33) established the Qualifying Individual or QI eligibility group effective January 1998.

(8) Section 112 of the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275) increased the resource standard for QMB, SLMB, and QI to 3 times the maximum resources available under the Supplemental Security Income program, adjusted annually by increases in the Consumer Price Index effective January 1, 2010.

(9) Title II, section 211, of the Medicare Access and CHIP Reauthorization Act (Pub. L. 114–10), effective April 16, 2015, permanently extended the QI eligibility group.

(10) Title II, section 402 of the Consolidated Appropriations Act of 2021 (Pub. L. 116–260), effective January 1, 2023, expands QMB, SLMB, and QI to cover individuals who are enrolled in Medicare Part B for coverage of immunosuppressive drugs.

(b) *Definitions.* As used in this subpart, unless the context indicates otherwise—

1634 State means a State that has an agreement with SSA, in accordance with section 1634 of the Act, for SSA to determine Medicaid eligibility on behalf of the State for individuals residing in the State whom the SSA has determined eligible for SSI.

* * * * *

AFDC stands for aid to families with dependent children under Part A of title IV of the Act, as it was in effect on July 16, 1996.

* * * * *

Buy-in group means a coverage group described in section 1843 of the Act that is identified by the State and is composed of multiple Medicaid eligibility groups specified in the buy-in agreement.

* * * * *

State buy-in agreement or buy-in agreement means an agreement authorized or modified by section 1843 or 1818(g) of the Act, under which a State secures Part B or premium Part A coverage for individuals who are members of the buy-in group specified in the agreement, by enrolling them and paying the premiums on their behalf. A State's submission of a State plan amendment addressing its buy-in process, if approved by CMS, constitutes the ''buy-in agreement'' between the State and CMS for purposes of sections 1843 and 1818(g) of the Act.

(c) * * *

(1) A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10 and who is a member of the buy-in group, with the State paying the premiums on the individual's behalf. Individuals enrolled in the buy-in group can enroll in Part B at any time of the year, without regard to Medicare enrollment periods.

* * * * *

(5) In a 1634 State, CMS enrolls SSI beneficiaries in Medicare Part B, on behalf of the State, with the State paying the beneficiary's Part B premiums.

(6) Premiums paid under a State buy-in agreement are not subject to increase because of late enrollment or reenrollment.

■ 18. Effective January 1, 2023, § 407.42 is revised to read as follows:

§ 407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Basic rule.* The 50 States, the District of Columbia, and the Northern Mariana Islands must select one of the buy-in groups described in paragraph (b) in their buy-in agreements.

(b) *Buy-in groups available*—(1) *Group 1.* Cash Assistance and Deemed

Recipients of Cash Assistance: This buy-in group includes all of the following:

(i) Individuals who receive SSI or SSP or both and are covered under the State's Medicaid state plan as categorically needy.

(ii) Individuals who under the Act or any other provision of Federal Law are treated, for Medicaid eligibility purposes, as though the individual was receiving SSI or SSP and are covered under the State's Medicaid state plan as categorically needy.

(iii) At State option, individuals whom the State must consider to be recipients of AFDC. Individuals a State would be required to include in electing this option would be, but not limited to, individuals eligible for Medicaid on the basis of section 1931(b) of the Act or their receipt of adoption assistance, foster care or guardianship care under Part E of title IV of the Act, in accordance with § 435.145 of this chapter.

(2) *Group 2.* Cash Assistance and Deemed Recipients of Cash Assistance and three Medicare Savings Program eligibility groups. This buy-in group includes both of the following:

(i) Group 1.

(ii) Individuals enrolled in the—

(A) Qualified Medicare Beneficiary eligibility group described in § 435.123 of this chapter;

(B) Specified Low-Income Beneficiary eligibility group described in § 435.124 of this chapter; and

(C) Qualifying Individual eligibility group described in § 435.125 of this chapter.

(3) *Group 3.* All Medicaid Eligibility Groups: This buy-in group includes all individuals eligible for Medicaid.

§ 407.45 [Removed]

■ 19. Effective January 1, 2023, § 407.45 is removed.

■ 20. Effective January 1, 2023, § 407.47 is amended by revising paragraphs (a)(2) (b), (c) introductory text, and (d) introductory text and adding reserved paragraph (f) and paragraph (g) to read as follows:

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) * * *

(2) The effective date of the buy-in agreement or agreement modification that covers the buy-in group to which the individual belongs, and which may not be earlier than the third month after the month in which the agreement or modification is executed. The State must apply the earliest applicable start date for the applicable buy-in group.

* * * * *

(b) *Application of general rule: Medicaid eligibles who are, or are treated as, cash assistance beneficiaries.* For Medicaid eligibles who are, or are treated as, cash assistance beneficiaries, coverage begins with the later of the following:

(1) The first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is, or is treated as, a cash assistance beneficiary.

(2) The month in which the buy-in agreement is effective.

(c) *Application of general rule: Qualified Medicare Beneficiaries.* For individuals who are QMBs as defined under § 435.123 of this chapter, coverage begins with the later of the following:

* * * * *

(d) *Application of general rule: Other individuals eligible for Medicaid.* For individuals who are not cash assistance beneficiaries, are not treated as cash assistance beneficiaries, and are not QMBs, coverage begins with the later of the following:

* * * * *

(f) [Reserved].

(g) *Part B enrollment under a buy-in agreement.* Individuals in a buy-in group can enroll in Part B at any time of the year, without regard to Medicare enrollment periods.

■ 21. Effective January 1, 2024, § 407.47 is further amended by adding paragraph (f) to read as follows:

§ 407.47 Beginning of coverage under a State buy-in agreement.

* * * * *

(f) *Exception to the general rule: Limitations on retroactive adjustments in the case of retroactive Medicare Part A entitlement.* (1) In cases in which a Medicaid beneficiary is retroactively entitled to Medicare Part A, beginning with retroactive determinations made on or after January 1, 2024, State liability for retroactive Medicare Part B premiums for Medicaid beneficiaries under a buy-in agreement is limited to a period of no greater than 36 months prior to the date of the Medicare eligibility determination.

(2) The Secretary may grant good cause exceptions for periods of greater or less than 36 months if application of paragraph (f)(1) of the section would result in harm to a beneficiary or if the State cannot benefit from Medicare and further limiting State liability would not result in harm to the beneficiary.

* * * * *

■ 22. Effective January 1, 2023, § 407.48 is amended by revising paragraphs (c)(1) and (2) and adding paragraph (e) to read as follows:

§ 407.48 Termination of coverage under a State buy-in agreement.

* * * * *

(c) * * *

(1) On the last day of the last month for which he or she is eligible for inclusion in the buy-in group, if CMS determines ineligibility or receives a State ineligibility notice by a processing cut-off date as described in paragraph (e) of this section, by the second month after the month in which the individual becomes ineligible for inclusion in the buy-in group.

(2) On the last day of the second month before the month in which CMS receives a State ineligibility notice later than the time specified in paragraph (c)(1) of this section. If CMS receives a notice after the processing cut-off date conveyed under paragraph (e) of this section, CMS considers it to have been received the following month.

* * * * *

(e) *Processing cut-off dates for each calendar month.* On a quarterly basis, CMS is to prospectively convey to States a schedule of processing cut-off dates for each calendar month.

■ 23. Effective January 1, 2023, add subpart D to read as follows:

Subpart D—Part B Immunosuppressive Drug Benefit

Sec.

407.55 Eligibility to enroll.
407.57 Part B–ID benefit enrollment.
407.59 Attestation.
407.62 Termination of coverage.

Subpart D—Part B Immunosuppressive Drug Benefit

§ 407.55 Eligibility to enroll.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, an individual is eligible to enroll, be deemed enrolled, or reenroll in the Part B–ID benefit if their Part A entitlement ends as described in § 406.13(f)(2) of this subchapter.

(b) *Exception.* An individual is not eligible for the Part B–ID benefit if the individual is enrolled in or for any of the following:

(1) A group health plan or group or individual health insurance coverage, as such terms are defined in section 2791 of the Public Health Service Act.

(2) Coverage under the TRICARE for Life program under section 1086(d) of title 10, United States Code.

(3) A State plan (or waiver of such plan) under title XIX and is eligible to receive benefits for immunosuppressive drugs described in section 1836(b) of the Act under such plan (or such waiver).

(4) A State child health plan (or waiver of such plan) under title XXI and is eligible to receive benefits for such drugs under such plan (or such waiver).

(5) The patient enrollment system of the Department of Veterans Affairs established and operated under section 1705 of title 38, United States Code and is either of the following:

(i) Not required to enroll under section 1705 of title 38 to receive immunosuppressive drugs described in section 1836(b) of the Act.

(ii) Otherwise eligible under a provision of title 38, United States Code, other than section 1710 of such title, to receive immunosuppressive drugs described in section 1836(b) of the Act.

(c) *Appeals.* Denials for enrollment in the Part B–ID benefit will be considered an initial determination that is appealable under § 405.904(a)(1) of this subchapter.

§ 407.57 Part B–ID benefit enrollment.

(a) *Deemed enrollment.* An individual whose Part A entitlement ends in accordance with § 406.13(f)(2) of this subchapter on or after January 1, 2023, is deemed to have enrolled into the Part B–ID benefit effective the first day of the month in which the individual first satisfies § 407.55, provided he or she provides the attestation required under § 407.59 prior to the termination of their Part A benefits.

(b) *Individual enrollment.* An individual whose Part A entitlement ends in accordance with § 406.13(f)(2) of this subchapter, and who meets the requirements of § 407.55 and provides the attestation required under § 407.59, may enroll in the Part B–ID benefit under the following conditions:

(1) If the individual's entitlement ends prior to January 1, 2023, he or she may enroll in the Part B–ID benefit beginning on October 1, 2022.

(2) If individual's entitlement ends on or after January 1, 2023, the individual may enroll at any time after their entitlement ends.

(c) *Reenrollment.* An individual who had previously enrolled in the Part B–ID benefit, but terminated that benefit, can reenroll at any time, provided the individual meets the requirements of § 407.55 and provides the attestation required under § 407.59.

(d) *Attestation.* To enroll in the Part B–ID benefit, an individual must submit the required attestation as described in § 407.59.

(e) *Entitlement date.* The entitlement to the Part B–ID benefit will start as follows:

(1) For enrollments provided under paragraph (a) of this section, entitlement is effective the month Part A benefits are terminated.

(2) For enrollments provided under paragraphs (b) and (c) of this section, the Part B–ID benefit is effective the month following the month in which the individual provides the attestation required in § 407.59.

(3) *Exception.* Enrollments submitted October 1, 2022 through December 31, 2022, are effective January 1, 2023.

§ 407.59 Attestation.

As a condition of enrollment, an individual must attest to SSA in either a verbal attestation, signed paper form provided by SSA, by electronic submission, or fax, using procedures determined by SSA, that—

(a) The individual is not enrolled and does not expect to enroll in other coverage described in § 407.55(b); and

(b) If the individual does enroll in other coverage described in § 407.55(b), the individual will notify SSA within 60 days of enrollment in such other coverage.

§ 407.62 Termination of coverage.

(a) *Other coverage.* An individual who enrolls in other coverage as described in § 407.55(b) will have his or her enrollment in the Part B–ID benefit terminated on either of the following bases:

(1) If the individual notifies SSA of such coverage consistent with § 407.59(b), their enrollment in the Part B–ID benefit will be terminated effective the first day of the month after the month of notification unless the individual requests a different, prospective termination date that is not after the effective date of enrollment in other health insurance coverage, as described in § 407.55(b).

(2) If the individual does not notify SSA of this coverage consistent with § 407.59(b), their enrollment in the Part B–ID benefit will be terminated effective the first day of the month after the month in which there is a determination of the individual's enrollment in coverage described in § 407.55(b).

(b) *Death.* Enrollment in the Part B–ID benefit ends on the last day of the month in which the individual dies.

(c) *Nonpayment of premiums.* If an individual fails to pay the premiums, the Part B–ID benefit enrollment will end as provided in the rules for Part B premiums set forth in part 408 of this chapter.

(d) *Request by individual.* An individual may request disenrollment at any time by notifying SSA that he or she no longer wants to be enrolled in the Part B–ID benefit. Such individual's enrollment in the Part B–ID benefit ends with the last day of the month in which the individual provides the disenrollment request, except for an individual who loses coverage under a State buy-in agreement, as described in § 407.50(b)(2)(i).

(e) *Entitlement to Hospital Insurance benefits.* Enrollment in the Part B–ID benefit ends effective the last day of the month prior to the month that the individual becomes entitled to benefits under § 406.5, § 406.12, or § 406.13 of this subchapter.

(f) *Appeals.* An involuntary termination of the Part B–ID benefit for reasons described at § 407.62(a)(2), (b), or (c) of this subsection, will be considered an initial determination that is appealable under § 405.904(a)(1) of this subchapter. An individual can request to continue receiving Part B–ID benefits while waiting for an appeals decision.

PART 408—PREMIUMS FOR SUPPLEMENTARY MEDICAL INSURANCE

■ 24. Effective January 1, 2023, the authority citation for part 408 is revised to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

■ 25. Effective January 1, 2023, § 408.20 is amended by adding paragraph (f) to read as follows:

§ 408.20 Monthly premiums.

* * * * *

(f) *Part B–ID premiums*—(1) *Premium amount.* Beginning in 2022, and every year thereafter, the Secretary, as mandated by section 1839(j) of the Act, will determine and promulgate a monthly premium rate in September for the succeeding calendar year for individuals enrolled only in the Part B–ID benefit. Such premium is equal to 15 percent of the monthly actuarial rate for enrollees age 65 and over for that succeeding calendar year.

(2) *Premium adjustments.* (i) The Part B–ID benefit premium is subject to adjustments specified in §§ 408.20(e), 408.27, and 408.28.

(ii) The Part B–ID benefit premium is not subject to § 408.22.

(3) *Premium collection.* Premiums for the Part B–ID benefit are collected as set out in § 408.6 and subpart C of this part.

(4) *Premium deductions.* Part B–ID premiums are to be deducted following the rules set forth in § 408.40.

■ 26. Effective January 1, 2023, § 408.24 is amended by—

■ a. Revising paragraph (a) introductory text;

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding new paragraph (b);
■ d. Revising newly redesignated paragraph (c) introductory text; and
■ d. Adding paragraph (d).

The revisions and additions read as follows:

§ 408.24 Individuals who enrolled or reenrolled before April 1, 1981 or after September 30, 1981.

(a) *Enrollment.* For an individual who first enrolled before April 1, 1981 or after September 30, 1981 and before January 1, 2023, the period includes the number of months elapsed between the close of the individual's initial enrollment period and the close of the enrollment period in which he or she first enrolled, and excludes the following:

* * * * *

(b) *Enrollment on or after January 1, 2023.* For an individual who first enrolled on or after January 1, 2023, the period *includes* the number of months elapsed between the close of the individual's initial enrollment period and the close of the month in which he or she first enrolled and *excludes*—

(1) The periods of time described in (a)(1) through (10) of this section; and

(2) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 407.23 of this subchapter provided the individual enrolls within the duration of the SEP.

(c) *Reenrollment.* For an individual who reenrolled before April 1, 1981, or after September 30, 1981, and before January 1, 2023, the period—

* * * * *

(d) *Reenrollment on or after January 1, 2023.* For an individual who reenrolled on or after January 1, 2023, the period—

(1) Includes the number of months specified in paragraphs (c)(1)(i) through (iii) of this section; and

(2) Excludes—

(i) The number of months specified in paragraphs (c)(2)(i) and (ii) of this section; and

(ii) Any months of non-coverage in accordance with an individual's use of an exceptional conditions SEP under § 407.23 of this subchapter provided the individual enrolls within the duration of the SEP.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 27. Effective January 1, 2023, the authority citation for part 410 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395m, 1395hh, 1395rr, and 1395ddd.

■ 28. Effective January 1, 2023, § 410.30 is amended by revising paragraph (b) to read as follows:

§ 410.30 Prescription drugs used in immunosuppressive therapy.

* * * * *

(b) *Eligibility.* For drugs furnished on or after December 21, 2000, coverage is available only for prescription drugs used in immunosuppressive therapy, furnished to an individual who received an organ or tissue transplant for which Medicare payment is made, provided the individual is eligible to receive Medicare Part B benefits, including, beginning January 1, 2023, an individual who meets the requirements specified in § 407.55 of this subchapter.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 29. Effective January 1, 2023, the authority citation for part 423 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

■ 30. Effective January 1, 2023, § 423.30 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 423.30 Eligibility and enrollment.

(a) * * *

(1) * * *

(i) Is entitled to Medicare benefits under Part A or enrolled in Medicare Part B (but not including an individual enrolled solely for coverage of immunosuppressive drugs under § 407.1(a)(6)) of this subchapter.

* * * * *

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

■ 31. Effective January 1, 2023, the authority citation for part 431 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 32. Effective January 1, 2023, § 431.625 is amended—
■ a. In paragraph (d)(1) by removing the reference ''title I, IV–A, X'' and adding is its place the reference ''title I, X'';
■ b. By removing paragraphs (d)(2)(i), (vi), and (x);
■ c. By redesignating paragraphs (d)(2)(ii) through (v) as paragraphs (d)(2)(i) through (iv), respectively, and redesignating paragraphs (d)(2)(vii) through (ix) as paragraphs (d)(2)(v) through (vii), respectively;
■ d. In newly redesignated paragraph (d)(2)(i) by removing the reference ''435.114,'';
■ e. By revising newly redesignated paragraph (d)(2)(iii);
■ f. In newly redesignated paragraph (d)(2)(iv) by removing ''chapter'' and adding in its place ''subchapter'';
■ g. By revising newly redesignated paragraphs (d)(2)(vi) and (vii);
■ h. By adding new paragraphs (d)(2)(viii) and (ix); and
■ i. In paragraph (d)(3) by removing the reference ''435.914'' and adding in its place the reference ''435.915.''

The revisions additions read as follows:

§ 431.625 Coordination of Medicaid with Medicare Part B.

* * * * *

(d) * * *

(2) * * *

(iii) Beneficiaries whom States must consider to be recipients of AFDC, including those who receive adoption assistance, foster care or guardianship care, under part E of title IV of the Act, in accordance with §§ 435.145 and 436.114(e) of this subchapter, or who receive Medicaid coverage for low income families, in accordance with section 1931(b) of the Act.

* * * * *

(vi) Disabled children living at home to whom the State provides Medicaid under § 435.225 of this subchapter.

(vii) Beneficiaries required to be covered under §§ 435.115 and 436.114(f) and (h) of this subchapter, that is, those who remain eligible for 4 months of temporary Medicaid coverage because of the increased collection of spousal support under part D of title IV of the Act.

(viii) Individuals required to be covered under the QMB, SLMB, and QI eligibility groups, each separately defined in §§ 435.123 through 435.125 of this subchapter.

(ix) Adult children with disabilities, as described in 1634(c) of the Act.

* * * * *

PART 435—MANDATORY COVERAGE OF THE AGED, BLIND AND DISABLED

■ 33. Effective January 1, 2023, the authority citation for part 435 is revised to read as follows:

Authority: 42 U.S.C. 1302.

■ 34. Effective January 1, 2023, § 435.4 is amended by adding a definition for ''Medicare Savings Programs'' as follows:

§ 435.4 Definitions and use of terms.

* * * * *

Medicare Savings Programs means four Medicaid eligibility groups authorized under section 1902(a)(10)(E) and 1905(p) and (s) of the Act that serve certain low-income Medicare

beneficiaries. These groups include the Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary, Qualifying Individual, and Qualified Disabled and Working Individual eligibility groups, each separately codified in §§ 435.123 through 435.126.

* * * * *

■ 35. Effective January 1, 2023, § 435.123 is added to read as follows:

§ 435.123 Individuals eligible as qualified Medicare beneficiaries.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(i) and 1905(p)(1) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet all of the following:

(1) Are entitled to Medicare Part A based on the eligibility requirements set forth in § 406.5(a) or § 406.20(b) of this chapter or who are enrolled in Medicare Part B for coverage of immunosuppressive drugs based on eligibility requirements described in § 407.55 of this chapter.

(2) Have an income, subject to paragraphs (b)(2)(i) and (ii) of this section, that does not exceed 100 percent of the Federal poverty level.

(i) During a transition month (as defined in paragraph (b)(2)(ii) of this section), any income attributable to a cost of living adjustment in Social Security retirement, survivors, or disability benefits does not count in determining an individual's income.

(ii) A transition month is any month of the year beginning when the cost of living adjustment takes effect, through the month following the month of publication of the revised official poverty level.

(3) Have resources, determined using financial methodologies no more restrictive than SSI, that do not exceed three times the maximum resource level allowed under the SSI program, annually adjusted by increases in the Consumer Price Index for inflation as defined in section 1905(p)(1)(C) of the Act.

(c) *Scope.* Medical assistance included in paragraph (b) of this section includes all of the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for Parts A and B premiums and cost sharing, including deductibles and coinsurance, and copays.

(2) For individuals enrolled in Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only coverage of premiums and cost sharing related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 36. Effective January 1, 2023, § 435.124 is added to read as follows:

§ 435.124 Individuals eligible as specified low-income Medicare beneficiaries.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(iii) and 1905(p)(3)(A)(ii) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet the eligibility requirements in § 435.123(b), except that income exceeds 100 percent, but is less than 120 percent of the poverty level.

(c) *Scope.* Medical assistance included in paragraph (b) of this section includes the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for the Part B premium.

(2) For individuals enrolled under Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only coverage of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 37. Effective January 1, 2023, § 435.125 is added to read as follows:

§ 435.125 Individuals eligible as qualifying individuals.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(iv) and 1905(p)(3)(A)(ii) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet the eligibility requirements in § 435.123(b), except that income is at least 120 percent, but is less than 135 percent of the Federal poverty level.

(c) *Scope.* Medical assistance included in paragraph (b) of this section includes the following:

(1) For individuals entitled to Medicare Part A as described in paragraph (b)(1) of this section, coverage for the Part B premium.

(2) For individuals enrolled under Medicare Part B for coverage of immunosuppressive drugs as described in paragraph (b)(1) of this section, only payment of the Part B premium related to enrollment in Medicare Part B for coverage of immunosuppressive drugs.

■ 38. Effective January 1, 2023, § 435.126 is added to read as follows:

§ 435.126 Individuals eligible as Qualified Disabled and Working Individuals.

(a) *Basis.* This section implements sections 1902(a)(10)(E)(ii) and 1905(s) of the Act.

(b) *Eligibility.* The agency must provide medical assistance to individuals who meet all of the following:

(1) Are entitled to Medicare Part A based on the eligibility requirements set forth in § 406.20(c) of this chapter.

(2) Have income, subject to paragraphs (b)(2)(1)(i) and (ii) of this section, that is less than or equal to 200 percent of the federal poverty level.

(i) During a transition month (as defined in paragraph (b)(2)(ii) of this section), any income attributable to a cost of living adjustment in Social Security retirement, survivors, or disability benefits does not count in determining an individual's income.

(ii) A transition month is any month of the year beginning when the cost of living adjustment takes effect, through the month following the month of publication of the revised official poverty level.

(3) Have resources that do not exceed twice the SSI resource standard described in section 1613 of the Act.

(c) *Scope.* Medical assistance included in paragraph (b) of this section is coverage of the Part A premium.

Dated: October 24, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–23407 Filed 10–28–22; 4:15 pm]

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FEDERAL REGISTER

Vol. 87 Thursday,
No. 212 November 3, 2022

Part V

The President

Proclamation 10483—Critical Infrastructure Security and Resilience Month, 2022
Proclamation 10484—National Adoption Month, 2022
Proclamation 10485—National Alzheimer's Disease Awareness Month, 2022
Proclamation 10486—National Diabetes Month, 2022

Federal Register
Vol. 87, No. 212
Thursday, November 3, 2022

Presidential Documents

Title 3—

The President

Proclamation 10483 of October 31, 2022

Critical Infrastructure Security and Resilience Month, 2022

By the President of the United States of America

A Proclamation

This month, we recommit to improving the resilience of our Nation's critical infrastructure so it can withstand all hazards—natural and manmade. By building better roads, bridges, and ports; fortifying our information technology and cybersecurity across sectors, including election systems; safeguarding our food and water sources; moving to clean energy; and strengthening all other critical infrastructure sectors, we will lay the foundation for long-term security and prosperity.

When our critical infrastructure shows signs of wear, everyday Americans pay the price. When powerful storms and forest fires—made more frequent and ferocious by climate change—shut down energy grids, families can lose power for weeks. When unsecure networks are hacked, critical services can go offline, and businesses can suffer huge losses. When bridges collapse and first responders must travel further to reach disaster sites, Americans can die. Crumbling infrastructure around the world affects us at home as well: Extreme weather, cyberattacks, and other disasters have ripple effects, threatening global stability and disrupting supply chains everywhere.

That is why my Administration is reinforcing America's critical infrastructure and supporting our international partners as they do the same. Last year, I signed the Bipartisan Infrastructure Law to make a once-in-a-generation investment in resilience and build a better America—modernizing our roads, bridges, and ports; delivering clean water and high-speed internet to our communities; and helping to eliminate the use of lead pipes in this country, all while creating a new generation of good-paying jobs. This year, I signed the CHIPS and Science Act into law, securing historic funding for research and development and to build a resilient supply chain for semiconductors here in America. At the same time, we are shielding our entire country against—and actively countering—malicious cyber activity, and establishing clear international rules of the road as they relate to cyberspace. Our Federal agencies are working more closely with the private sector—which owns and operates most of America's critical infrastructure—to defend against cyberattacks. I have reinvigorated the National Infrastructure Advisory Council to advise on how to reduce physical and cyber risks and improve the security and resilience of our Nation's critical infrastructure sectors.

At the same time, we are committed to protecting our election systems. The right to vote and to have that vote counted is the foundation of our democracy and our Nation's stability, and I am determined to protect our election workers and defend our free and fair elections from cyberattacks, threats of violence, and disinformation campaigns.

Securing our critical infrastructure also means tackling the climate crisis—an existential threat to our health care, food systems, water sources, and energy grid. That is why I was proud to sign the Inflation Reduction Act, the largest investment ever to combat climate change while strengthening our energy sector, and to invoke the Defense Production Act to accelerate the manufacturing of critical clean energy technologies here at home. By ushering in a clean energy future, enhancing wildfire preparedness, and

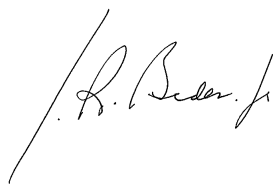
creating thousands of jobs, our actions will minimize the risk of natural disasters and save lives.

Our efforts to bolster critical infrastructure extend beyond our own borders as well. Through programs like the Partnership for Global Infrastructure and Investment, the Digital Invest Program from the United States Agency for International Development, and the President's Emergency Plan for Adaptation and Resilience, the United States is helping pay for game-changing infrastructure projects in developing countries, strengthening the global economy and international supply chains. We are also working with allies and partners to enhance the resilience of critical infrastructure around the world, including trusted telecommunications providers, supply chains, and energy networks, and to defend and respond to threats from state and nonstate actors.

The choices we make today to strengthen our critical infrastructure are going to affect our country and our world for several generations to come. This year, as we observe the 50th anniversary of the Clean Water Act and the Federal Government's landmark actions to protect and restore our waterways—let us rededicate ourselves to building a stronger, more resilient Nation. With bold action, smart investments, and a will to win the competition for the future, anything is possible.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as Critical Infrastructure Security and Resilience Month. I call upon the people of the United States to recognize the importance of protecting our Nation's infrastructure and to observe this month with appropriate measures to enhance our national security and resilience.

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



[FR Doc. 2022–24148
Filed 11–2–22; 11:15 am]
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Presidential Documents

Proclamation 10484 of October 31, 2022

National Adoption Month, 2022

By the President of the United States of America

A Proclamation

During National Adoption Month, let us celebrate families that create safe and supportive homes and families that are made whole through adoption, and let us continue working to ensure that every child has a loving family to call their own.

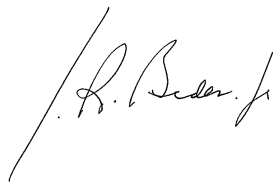
I am committed to helping families pay for the costs of adopting a child, which is why I have called for the adoption tax credit to be made fully refundable. This would enable devoted adoptive families to worry less about the costs of welcoming children into their homes and focus more on laying the supportive foundation for full and happy lives. I have also proposed extending the adoption tax credit to legal guardianships—including grandparents, aunts, uncles, and other relatives—which would make it easier for loving family members to care for children who need their support. This measure could also help reduce racial inequities in our country's child welfare system, which too often render some children of color more likely to be removed from their homes and cut off from their families and communities.

At the same time, my Administration is fighting discrimination in the adoption process. As part of my Executive Order on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals, we are partnering with State child welfare agencies to remove barriers and combat biases that can make it harder for LGBTQI+ families to adopt. The Department of Health and Human Services will provide training and technical assistance to State child welfare agencies in order to better support LGBTQI+ youth, whose needs are often unmet in the foster care system, and take steps to ensure all youth are placed in supportive environments. Additionally, we are committed to ensuring that older adolescents transitioning from the foster care system have access to housing and education and can pay their bills and prepare for adulthood, which is why I have proposed increasing funding for the John H. Chafee Successful Transition to Adulthood program by 70 percent.

This National Adoption Month, we recognize all the adoptive and kinship families across America who change children's lives for the better. We give thanks for the foster families who love, care for, and provide for our Nation's foster youth as well as the dedicated professionals who are invested in these children's futures. We send our encouragement to everyone still waiting for the chance to adopt and grow their family. We rededicate ourselves to ensuring that all children have the unconditional love of a permanent home.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Adoption Month. I encourage all Americans to honor this month by helping the children and youth in your communities find homes where they can thrive. Through our collective action, we can connect children and youth with their forever families and give them a brighter future.

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



[FR Doc. 2022–24160
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Billing code 3395–F3–P

Presidential Documents

Proclamation 10485 of October 31, 2022

National Alzheimer's Disease Awareness Month, 2022

By the President of the United States of America

A Proclamation

During National Alzheimer's Disease Awareness Month, we honor and support the millions of brave Americans who have been diagnosed with Alzheimer's, along with the selfless family members and caregivers who stand by their sides throughout the long course of this heartbreaking disease.

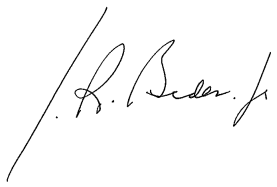
Alzheimer's is common and especially cruel, robbing people of their memories, thoughts, and identity over many years. Across the Nation, this epidemic is growing: In the next 30 years, the number of Americans with Alzheimer's is expected to reach nearly 14 million, straining families and our health care system. Fortunately, we are on the cusp of life-saving advances that can forever change the course of the disease.

This year, my Administration launched the transformational Advanced Research Projects Agency for Health (ARPA–H) at the National Institutes of Health, which is investing a billion dollars in cutting-edge research to prevent, treat, and cure Alzheimer's and other deadly diseases. Modeled on the Pentagon program that brought us game-changing technologies like the internet and GPS, ARPA–H will support bold ideas that neither traditional research nor the private sector is willing to pursue, driving new biomedical breakthroughs. At the same time, the Department of Health and Human Services is investing in research and technology that can keep Alzheimer's patients living longer in their own homes; training caregivers to support them; and educating Americans about early warning signs of Alzheimer's, dementia risks, and brain health generally. Meanwhile, I signed the Inflation Reduction Act, which will protect Alzheimer's patients from high bills at the pharmacy by capping what they pay at $2,000 per year. Throughout our work, my Administration is committed to keeping older Black and Brown Americans, who are more than twice as likely to be affected by dementias, at the center of our push to understand these diseases.

Curing Alzheimer's is not a partisan issue. The disease does not discriminate between red and blue. Beating it is something we can do together, in honor of the loved ones we have lost or those who are slipping away, and in support of the remarkable caregivers, doctors, researchers, and advocates who are fighting on their behalf today. Our Nation is on the cusp of tremendous scientific progress, and I pledge the best of our energies to support caregivers, improve Alzheimer's treatments, and work towards a cure that will free future generations from the specter of this disease.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Alzheimer's Disease Awareness Month. I call on the people of the United States of America to recognize their fellow citizens living with Alzheimer's, along with their families and caregivers. I also encourage all Americans to visit Alzheimers.gov for resources and information on living with or caring for someone with Alzheimer's disease.

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



[FR Doc. 2022–24161
Filed 11–2–22; 11:15 am]
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Presidential Documents

Proclamation 10486 of October 31, 2022

National Diabetes Month, 2022

By the President of the United States of America

A Proclamation

This month, we acknowledge more than 37 million Americans living with diabetes who inspire us to develop better treatment options, make life-saving medicines more affordable, and finally find a cure for this disease.

Over 10 percent of Americans have Type 1, Type 2, or gestational diabetes, and tens of millions more remain at risk of developing this chronic condition. While the scientific community has made strides over the past several decades to help patients manage symptoms, too many loved ones must still contend with the daily challenge of managing blood sugar levels, the dangers of long-term health complications, and the frustration of being diagnosed with a disease that has yet to be cured. Despite it costing only $10 to manufacture a vial of insulin, drug companies can charge more than 30 times that, leaving families struggling to pay for life-saving medicine. The inability to afford vital treatment not only deprives people of a healthy existence but also of their dignity. This is especially true for people of color, who have higher rates of diabetes.

Health care should be a right, not a privilege. That is the America we are building. In August, after decades of big pharmaceutical companies blocking meaningful change, I signed the Inflation Reduction Act into law, which caps the cost of a month's supply of insulin at $35 per prescription for over 3 million seniors on Medicare. I am committed to lowering the cost of insulin for everyone, including hundreds of thousands of children with Type 1 diabetes. In March, I secured $1 billion in bipartisan funding from the Congress to create the Advanced Research Project Agencies for Health (ARPA–H) to drive medical breakthroughs in prevention, detection, and treatment of diabetes and other diseases. Modeled after the Defense Advanced Research Projects Agency (DARPA) that made pivotal discoveries leading to the invention of the internet, GPS, and so much more, ARPA–H will help our Nation pursue bold, audacious, and life-saving advances that improve the health and well-being of every American.

In September, my Administration also convened the first White House Conference on Hunger, Nutrition, and Health in over 50 years and set a goal to end hunger and reduce diet-related diseases, like diabetes, by 2030 while also continuing to reduce the health disparities that persist in underserved communities. My Administration released the White House National Strategy on Hunger, Nutrition, and Health, which focuses on improving food access and affordability, integrating nutrition and health, empowering consumers to make and have access to healthy choices, supporting physical activity for all, and enhancing nutrition and food insecurity research. In this strategy, we commit to better preventing and managing diabetes, expanding access to nutrition counseling, and working with the Congress to make the Medicare Diabetes Prevention Program permanent and cost-effective.

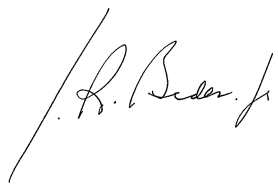
I have also taken steps to strengthen the Affordable Care Act, which connects people with vital screening and services for diabetes and related health issues. I am making the newest and most effective COVID–19 vaccines accessible to all Americans, which will save lives—particularly for people living with diabetes who are often more vulnerable to the worst effects

of COVID–19. Throughout this work, my Administration is also determined to provide equal access to health care to those who are disproportionately affected by diabetes and often are least likely to receive the support they need, including Black, Brown, and Native Americans.

During National Diabetes Month, my Administration continues the fight to lower the cost of lifesaving insulin for families so that no parent is forced to ration vital medication and no child needs to skip dosages because basic treatment is unaffordable. We offer gratitude to the dedicated medical professionals, researchers, advocates, and caregivers who support loved ones living with diabetes and bring us closer to ending this disease once and for all. We stand by every American diagnosed with diabetes, honor their strength and resolve, and commit to helping them live full and healthy lives.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim the month of November 2022 as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, research institutions, and other interested groups to join in activities that raise diabetes awareness and help prevent, treat, and manage this disease.

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



[FR Doc. 2022–24162
Filed 11–2–22; 11:15 am]
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FEDERAL REGISTER

Vol. 87 Thursday,
No. 212 November 3, 2022

Part VI

The President

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Proclamation 10488—National Family Caregivers Month, 2022
Proclamation 10489—National Lung Cancer Awareness Month, 2022
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Presidential Documents

Title 3—

The President

Proclamation 10487 of October 31, 2022

National Entrepreneurship Month, 2022

By the President of the United States of America

A Proclamation

During National Entrepreneurship Month, we celebrate the doers, dreamers, and job creators whose vision and grit fuel our economy and capture the essence of America.

Starting and owning a business has always been a key path to the American Dream—a way to build wealth, serve your neighbors, and leave a mark in a community and on the world. Requiring risk-taking and daring, entrepreneurs faced additional challenges during the pandemic and the economic crisis that it created. Two years ago, hundreds of thousands of small businesses closed, while others struggled to find workers and stock their shelves. But as we have recovered, Americans have responded with entrepreneurial spirit, seizing the opportunity to build new businesses and launch new careers.

Our Administration is working across the board to help them all succeed. Today, American entrepreneurship is booming. A record 5.4 million new businesses were started in 2021, over 20 percent more than any year on record. New entrepreneurship rates have increased the most among minorities, particularly in Hispanic and Black communities.

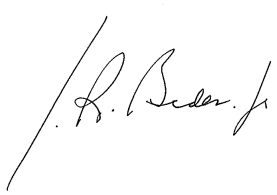
The American Rescue Plan distributed $450 billion in emergency relief to more than 6 million businesses at the height of the pandemic. The Restaurant Revitalization Fund kept restaurants open. Our expanded State Small Business Credit Initiative is helping entrepreneurs tap $10 billion in investment and loans, and we are making the Minority Business Development Agency permanent to boost minority entrepreneurs' access to capital and markets.

Meanwhile, our Bipartisan Infrastructure Law is rebuilding America's roads, bridges, railways, and ports so businesses can get goods to consumers quickly and affordably. It is bringing high-speed broadband to small towns and rural areas so Americans anywhere can run a business online. Our CHIPS and Science Act is making historic investments in semiconductor companies that produce the tiny computer chips that power everything from smartphones to cars—benefitting thousands of smaller businesses along the supply chain. Our Inflation Reduction Act is slashing health insurance and energy costs for entrepreneurs, increasing research-and-development tax credits, and incentivizing manufacturers to use American suppliers, creating more good-paying jobs. We are also investing in small business support and STEM education to give entrepreneurs access to the skills and workforce needed to thrive. We are making sure that when the Federal Government spends taxpayer money to buy the things it needs, it buys them from American companies—including from small disadvantaged businesses, to whom we have already awarded a record amount of contracting dollars.

I have long said that America can be defined in one word: possibilities. Entrepreneurs' willingness to take risks, work hard, and never quit make those possibilities come alive. They turn vision into reality and ideas into products, profits, and national prosperity. This month, we celebrate their contributions as a point of national pride and recommit to giving them the space and support to make sure America wins the 21st century.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities and to celebrate November 15, 2022, as National Entrepreneurs' Day.

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



[FR Doc. 2022–24165
Filed 11–2–22; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10488 of October 31, 2022

National Family Caregivers Month, 2022

By the President of the United States of America

A Proclamation

During National Family Caregivers Month, we recognize the love and sacrifice of more than 50 million Americans providing crucial care and medical assistance to parents, children, siblings, and other loved ones, ensuring their health and dignity.

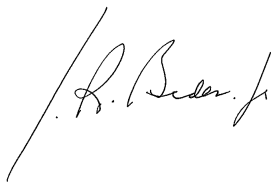
Today, far too many Americans find themselves sandwiched between the enormous tasks of supporting aging parents, raising young children, and earning a living. Others bear the responsibility of caring for loved ones with a disability or looking after wounded, ill, or injured service members and veterans who have sacrificed so much for us all. The truth is, at some point in our lives, each of us will likely need to be a family caregiver—but the burden falls especially hard on those who cannot afford support. Women, people of color, and immigrants shoulder a disproportionate share of the obligation, sometimes forced to leave good jobs to instead provide care. Their work is a profound service to their families and to our Nation, but they are still too often unseen, undervalued, and unpaid.

No one should have to choose between a paycheck and looking after a loved one. My Administration is committed to easing that squeeze on working families and getting caregivers the resources and respect they deserve. The Department of Health and Human Services' National Strategy to Support Family Caregivers outlines nearly 350 actions the Federal Government can take to support family caregivers' health, well-being, and financial security. Our American Rescue Plan provided $145 million to help the National Family Caregiver Support Program deliver counseling, training, and short-term relief to family and other informal care providers. We have expanded the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers so more veteran caregivers have the financial and mental health support they deserve, and we helped launch the ''Hidden Helpers'' initiative to serve the 2.3 million children now living with a disabled veteran. Meanwhile, we have pushed the Congress to lower child and elder care costs across the country and provide paid family and medical leave. We have more to do to win that fight, and I will not give up.

Family caregivers are the backbone of our Nation's long-term care system, doing essential work with devotion, often at great emotional and financial cost. We owe them. It is time to bring their service out of the shadows and celebrate and support them in living their own happy, healthy, and fulfilling lives.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Family Caregivers Month. I encourage all Americans to reach out to those who provide care for our Nation's family members, friends, and neighbors in need, to honor and thank them.

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



[FR Doc. 2022–24166
Filed 11–2–22; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10489 of October 31, 2022

National Lung Cancer Awareness Month, 2022

By the President of the United States of America

A Proclamation

During National Lung Cancer Awareness Month, we are inspired by the courage and fight of the millions of patients, survivors, caregivers, doctors, researchers, and advocates battling this terrible disease—the leading cause of cancer deaths in the United States. For the loved ones we have lost and all those we can save, we recommit to investing in cutting-edge screening, prevention, and treatments, making them more affordable and effective, and uniting this country in our movement to end cancer as we know it.

Over the past three decades, lung cancer case and death rates have decreased dramatically nationwide—an encouraging trend we owe largely to lower smoking rates and improved immunotherapies that use the body's own immune system to attack cancer. But lung cancer is still an overwhelmingly tough diagnosis. Rural communities have seen stubbornly high mortality rates, driven in part by increased tobacco use, and Black men are disproportionately likely to develop and die from lung cancer. For the nearly quarter-million Americans facing this diagnosis each year, the paralyzing fear of what is to come, the onslaught of new information, and the cost of new treatment can make the journey daunting.

When I was elected, I was determined to supercharge our Nation's work to cure cancer. The First Lady and I set a goal of cutting the cancer death rate by half in the next 25 years—boosting funding for breakthroughs, turning more cancers from death sentences into chronic diseases, and better supporting both patients and caregivers. To achieve that, we reignited the Cancer Moonshot that I began under President Obama in 2016, convening our Nation's first-ever Cancer Cabinet. I also launched the Advanced Research Projects Agency for Health (ARPA–H). I had called for its creation as a candidate for President; and after I was elected, I brought Democrats, Republicans, and Independents in the Congress together to invest $1 billion in its launch. Modeled on the Defense Advanced Research Projects Agency, the Pentagon program that has led to world-changing technologies like the internet and GPS, ARPA–H will have a singular purpose—to find breakthrough ways to prevent, diagnose, treat, and cure cancer and other diseases, and free us all to live healthier lives. We could soon see vaccines that prevent cancer. Easy blood tests that could detect it early. A simple shot, instead of grueling chemo. The possibilities are astounding. I also signed an Executive Order to help ensure biotechnology invented in America is made in America, so we will always have access to these life-saving medications.

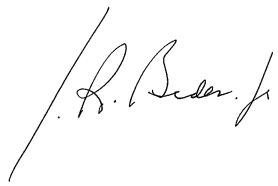
Meanwhile, my Administration is working to make current lifesaving care more affordable. I signed the Inflation Reduction Act, which caps prescription drug costs for seniors on Medicare at $2,000 per year, including for expensive cancer drugs. We are protecting and expanding the Affordable Care Act, which requires insurance companies to cover recommended cancer screenings and primary care visits, and prohibits them from denying coverage to cancer survivors or others with preexisting conditions. In August, I signed the PACT Act to ensure millions of veterans who were exposed to toxic substances during their military service get the health care and benefits

that they and their families have earned. We are also fighting to reduce people's exposure to carcinogens in the first place. Because smoking is the leading cause of lung cancer, the Food and Drug Administration recently proposed a rule to ban menthol-flavored cigarettes and flavored cigars that are popular among first-time smokers, particularly children. The Environmental Protection Agency is working to ban the ongoing use of cancer-causing asbestos to protect American workers and families. The Centers for Disease Control and Prevention is helping cancer coalitions across the country boost access to screening and helping people quit smoking.

This month, I call on the private sector to continue its search for new treatments and a cure for lung cancer, to lower drug prices, to share more data to improve patient outcomes, and to promote smoking cessation. But there are also things that each of us can do to fight lung cancer in our own lives. For many, that starts with quitting smoking. You can reach a free expert to help you quit right away at BeTobaccoFree.gov, or by calling 877–44U–QUIT. Doctors across my Administration recommend that anyone over 50 who has smoked a pack or more a day for many years and currently smokes or has quit within the last 15 years should get an annual lung cancer screening. Beating cancer is not a red issue or a blue issue—it is something that affects us all and that we can all do together, drawing on the best talents, resources, and grit that this country has to offer. I am unwilling to postpone a cure.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Lung Cancer Awareness Month. I call upon the people of the United States to speak with their doctors and health care providers to learn more about lung cancer. I encourage citizens, government agencies, private businesses, nonprofit organizations, the media, and other interested groups to increase awareness about what Americans can do to prevent, detect, and treat lung cancer.

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



[FR Doc. 2022–24169

Filed 11–2–22; 11:15 am]

Billing code 3395–F3–P

Presidential Documents

Proclamation 10490 of October 31, 2022

National Native American Heritage Month, 2022

By the President of the United States of America

A Proclamation

During National Native American Heritage Month, we celebrate Indigenous peoples past and present and rededicate ourselves to honoring Tribal sovereignty, promoting Tribal self-determination, and upholding the United States' solemn trust and treaty responsibilities to Tribal Nations.

America has not always delivered on its promise of equal dignity and respect for Native Americans. For centuries, broken treaties, dispossession of ancestral lands, and policies of assimilation and termination sought to decimate Native populations and their ways of life. But despite this painful history, Indigenous peoples, their governments, and their communities have persevered and flourished. As teachers and scholars, scientists and doctors, writers and artists, business leaders and elected officials, heroes in uniform, and so much more, they have made immeasurable contributions to our country's progress.

We must do more to ensure that Native Americans have every opportunity to succeed and that their expertise informs our Federal policy-making. That is why my Administration is engaging in meaningful consultation with Tribal leaders, particularly when it comes to treaty rights, reserved rights, management and stewardship of Federal lands, consideration of Indigenous Knowledge, and other policies that affect Native peoples. That is also why I appointed Secretary Deb Haaland to be the first-ever Native American Cabinet Secretary, and why more than 50 Native Americans now serve in significant roles across the executive branch.

Meanwhile, we are creating new jobs in Native American communities and bolstering infrastructure in Tribal areas. My Administration's American Rescue plan made the largest-ever investment in Indian Country to help Tribal Nations combat the COVID–19 pandemic and to support Tribal economic recovery. My Administration's Bipartisan Infrastructure Law secured more than $13 billion exclusively for Native communities to deliver high-speed internet to Tribal lands, build safer roads and bridges, modernize sanitation systems, and provide clean drinking water—all while putting people to work. Through the Inflation Reduction Act, we are lowering the price of health care coverage and capping drug costs for Indigenous families. We are empowering Tribes to fight drought, improve fisheries, and transition to clean energy as part of the most significant climate investment this Nation has ever made. Those investments include climate adaptation planning and community-led relocation efforts, funding a Tribal Electrification Program to provide power to unelectrified homes, making Environmental Justice Block Grants available to help alleviate legacy pollution, bolstering conservation programs across the country, and restoring protections for treasured lands that Indigenous peoples have tirelessly stewarded, such as Bears Ears and the Grand Staircase-Escalante National Monument.

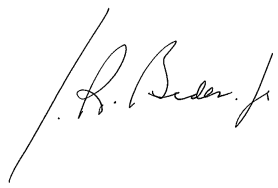
We are also helping Native communities heal from intergenerational trauma caused by past policies. Last year, the Department of the Interior launched the Federal Indian Boarding School Initiative to shed light on the harmful history of forced cultural assimilation at these academic institutions. We are investing in Tribal language revitalization, protecting Tribal voting rights,

and working with Tribal partners to tackle the crisis of missing or murdered Indigenous people.

As we look ahead, my Administration will continue to write a new and better chapter in the story of our Nation-to-Nation relationships. We will defend Tribal sovereignty, self-government, self-determination, and the homelands of Tribal Nations. We will support Tribal economies, recognizing that Tribal governments provide a vast array of physical infrastructure, social services, and good-paying jobs that benefit their citizens and surrounding communities. We will keep fighting for better health care, child care, education, and housing in Tribal communities. We will always honor the profound impact Native Americans continue to have in shaping our Nation and bringing us closer to the more perfect Union we know we can and must be.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Native American Heritage Month. I urge all Americans, as well as their elected representatives at the Federal, State, and local levels, to observe this month with appropriate programs, ceremonies, and activities, and to celebrate November 25, 2022, as Native American Heritage Day.

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



[FR Doc. 2022–24170
Filed 11–2–22; 11:15 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10491 of October 31, 2022

National Veterans and Military Families Month, 2022

By the President of the United States of America

A Proclamation

This month, our Nation honors the strength and sacrifices of the families, caregivers, and survivors of our veterans and our current service members. They may not wear uniforms, but their service is essential to our national security and the character of our Nation. We owe them a debt of gratitude that we can never fully repay.

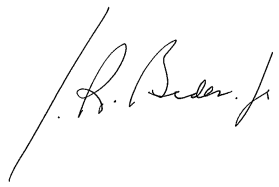
Constant tours, deployments, and rotations are difficult for our military families. Jill and I have personally experienced the anxious pride that parents feel seeing their child in uniform. We have marveled at the devotion of military families and their resilience to uproot their lives every few years and move to new communities. We honor the stalwart courage and resolve of veteran families caring for their loved ones when their service in uniform concludes. We grieve alongside families of the fallen who have lost a piece of their soul. That is why I take so seriously the sacred obligation to prepare and equip our service members when we send them into harm's way and to care for them and their families when they return home.

Since coming to office, I have signed into law important expansions of services and benefits to support our veterans and their families, improved VA health care and benefits for veterans exposed to burn pits and other toxic substances through the PACT Act, and made historic reforms to the military justice system that will enhance safety and protections for service members and their families impacted by sexual assault and domestic violence. The First Lady's Joining Forces initiative is helping military spouses find jobs, connecting military children with better education, and helping to ensure that military and veteran families, caregivers, and survivors have what they need to thrive. My Administration has also released a comprehensive public health strategy to reduce military and veteran suicides, which will guide our efforts to stand with families and protect the lives of our Nation's heroes.

To be a veteran or a service member is to have endured and survived challenges most Americans will never know. To be the family of one of those proud patriots is to sacrifice more for our country than most Americans will ever give. During National Veterans and Military Families Month, we pay homage to the unrelenting bravery and dedication of all who wear the uniform and to the unwavering love and support of all who serve alongside them. Families who put their lives on hold so our military can hold the line represent the best of America, and we will always remember what they do for our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2022 as National Veterans and Military Families Month. I call upon the people of the United States to honor veterans and military families with appropriate ceremonies and activities.

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



[FR Doc. 2022–24171
Filed 11–2–22; 11:15 am]
Billing code 3395–F3–P

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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