



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 64

April 4, 2023

Pages 19797–20058

OFFICE OF THE FEDERAL REGISTER



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

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

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

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

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

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

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202-512-1800
Assistance with public subscriptions	202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	FRSubscriptions@nara.gov
Phone	202-741-6000

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



Contents

Federal Register

Vol. 88, No. 64

Tuesday, April 4, 2023

Agriculture Department

See Food and Nutrition Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19903

Air Force Department

NOTICES

Meetings:

2023 Out-of-Cycle Public Interface Control Working Group for Navstar GPS Public Documents, 19940–19941

Census Bureau

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Annual Integrated Economic Survey, 19906–19907

Meetings:

National Advisory Committee, 19907–19908

Centers for Medicare & Medicaid Services

PROPOSED RULES

Medicare Program:

Fiscal Year 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements, 20022–20057

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19956–19958

Civil Rights Commission

NOTICES

Meetings:

West Virginia Advisory Committee, 19905–19906

Coast Guard

RULES

Special Local Regulations:

Northern California and Lake Tahoe Area Annual Marine Events; Blessing of the Fleet, San Francisco, CA, 19856

Northern California and Lake Tahoe Area Annual Marine Events; Opening Day on San Francisco Bay, San Francisco, CA, 19857

Sector Ohio Valley Annual and Recurring Special Local Regulations, 19857–19862

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19967

Meetings:

National Boating Safety Advisory Committee; May 2023, 19965–19967

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See Industry and Security Bureau

See International Trade Administration

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

See Patent and Trademark Office

Community Living Administration

NOTICES

Administration on Disabilities, The President's Committee for People With Intellectual Disabilities, 19959

Consumer Product Safety Commission

NOTICES

Meetings; Sunshine Act, 19940

Defense Department

See Air Force Department

RULES

TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals, 19844–19856

NOTICES

Meetings:

Defense Science Board, 19941

Drug Enforcement Administration

PROPOSED RULES

Schedules of Controlled Substances:

Temporary Placement of MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in Schedule I, 19896–19901

NOTICES

Importer, Manufacturer or Bulk Manufacturer of Controlled Substances; Application, Registration, etc.:

ANI Pharmaceuticals, Inc., 19989

Research Triangle Institute, 19989

Sharp Clinical Services, LLC, 19988

SpecGx, LLC, 19990

SpecGX, LLC, 19988–19989

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Cash Management Contract URL Collection, 19944

FY 2023 Child Care Access Means Parents in School Application Package, 19943

Charter Amendments, Establishments, Renewals and Terminations:

Negotiated Rulemaking Committee; Correction, 19943–19944

Privacy Act; Matching Program, 19941–19943

Energy Department

See Federal Energy Regulatory Commission

RULES

Energy Conservation Program:

Test Procedure for Television Sets; Correction, 19801

NOTICES

Meetings:

Secretary of Energy Advisory Board, 19945–19946

Request for Information:

Foundation for Energy Security and Innovation, 19944–19945

Environmental Protection Agency**RULES**

Pesticide Tolerances:

Deltamethrin, 19873–19879

PROPOSED RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

2015 Ozone National Ambient Air Quality Standard; El Paso-Las Cruces, TX-NM, 19901–19902

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Improving Customer Service, 19952–19953

Proposed Consent Decree:

Clean Air Act Citizen Suit, 19951–19952

Federal Aviation Administration**RULES**

Airspace Designations and Reporting Points:

Boswell Airport, CA, 19817–19818

Delphi, IN, 19823–19824

Greenville-Spartanburg Airport, Greer, SC, 19820–19821

New Coalinga Municipal Airport, CA, 19822–19823

Smithville, TX, 19821–19822

Vinita, OK, 19819

Airworthiness Directives:

Airbus Canada Limited Partnership Airplanes, 19815–19817

Bombardier, Inc., Airplanes, 19811–19814

Medium Flocking Bird Test at Climb Condition, 19801–19811

PROPOSED RULES

Airspace Designations and Reporting Points:

Benton Field Airport, Redding, CA, 19895–19896

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Maintenance, Preventive Maintenance, Rebuilding, and Alteration, 20016

Federal Communications Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 19953–19956

Federal Council on the Arts and the Humanities**NOTICES**

Meetings:

Arts and Artifacts Indemnity Panel Advisory Committee, 19991

Federal Emergency Management Agency**NOTICES**

Proposed Flood Hazard Determinations, 19967–19969

Federal Energy Regulatory Commission**NOTICES**

Application:

Hydro Technology, Inc., 19950–19951

Combined Filings, 19946–19950

Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:

Santa Paula Energy Storage, LLC, 19948

Revocation of Market-Based Rate Authority and

Termination of Electric Market-Based Rate Tariff:

Data Collection for Analytics and Surveillance and

Market-Based Rate Purposes Fred Meyer Stores, Inc., 19947–19948

Waiver Period for Water Quality Certification Application: Transcontinental Gas Pipe Line Co., LLC, 19949–19950

Federal Railroad Administration**NOTICES**

Petition for Waiver of Compliance, 20016–20018

Federal Reserve System**NOTICES**

Change in Bank Control:

Acquisitions of Shares of a Bank or Bank Holding Company, 19956

Fish and Wildlife Service**RULES**

Endangered and Threatened Species:

Establishment of a Nonessential Experimental Population of the Guam Kingfisher, or Sihek, on Palmyra Atoll, USA, 19880–19894

Food and Drug Administration**NOTICES**

Request for Information:

In-Home Disposal Systems for Opioid Analgesics, 19959–19961

Food and Nutrition Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Improving Coordination Between Supplemental Nutrition Assistance Program and Medicaid in State Agencies, 19903–19905

Foreign Assets Control Office**RULES**

Publication of Venezuela Sanctions Regulations Web General Licenses 29, 30, 30A, 31, and 31A, 19840–19842

Publication of Venezuela Sanctions Regulations Web General Licenses 32, 33, 34, 34A, and 35, 19842–19844

NOTICES

Sanctions Action, 20018–20020

Foreign-Trade Zones Board**NOTICES**

Authorization of Production Activity:

Foreign-Trade Zone 38; BMW Manufacturing Co., LLC; (Passenger Motor Vehicles); Spartanburg, SC, 19908

Proposed Production Activity:

Foreign-Trade Zone 136; Airbus OneWeb Satellites, North America LLC; (Satellites and Satellite Systems); Merritt Island, FL, 19908

Geological Survey**NOTICES**

Meetings:

Scientific Earthquake Studies Advisory Committee, 19973

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See Community Living Administration

See Food and Drug Administration

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

NOTICES

Homeland Security Advisory Council; New Subcommittees,
19969

Housing and Urban Development Department**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
HUD-Owned Real Estate Sales Contract and Addendums,
19972–19973

Indian Affairs Bureau**NOTICES**

Land Acquisition:
Cayuga Nation, Cayuga County Parcels, Cayuga County,
NY, 19973–19975

Industry and Security Bureau**NOTICES**

Order Denying Export Privileges:
Azur Air, 19908–19911
Order Renewing Temporary Denial of Export Privileges:
UTair Aviation JSC, 19911–19913
Order:
Kenneth Scott, Scott Communications, Inc., and Mission
Communications, LLC, 19913–19916

Interior Department

See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Ocean Energy Management Bureau

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:
Advance Notification of Sunset Review, 19924
Biodiesel From Argentina and Indonesia, 19920–19921
Brass Sheet and Strip From France, Germany, Italy, and
Japan, 19924–19925
Certain Large Vertical Shaft Engines Between 225cc and
999cc, and Parts Thereof From the People's Republic
of China, 19921–19923
Finished Carbon Steel Flanges From India, 19920
Multilayered Wood Flooring From the People's Republic
of China, 19923–19924
Opportunity To Request Administrative Review and Join
Annual Inquiry Service List, 19916–19920

International Trade Commission**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,
or Reviews:
Hardwood Plywood From China, 19986–19987

Joint Board for Enrollment of Actuaries**NOTICES**

Meetings:
Advisory Committee, 19987–19988

Justice Department

See Drug Enforcement Administration

RULES

Home Confinement Under the Coronavirus Aid, Relief, and
Economic Security Act, 19830–19840

Labor Department

See Occupational Safety and Health Administration

Land Management Bureau**NOTICES****Meetings:**

John Day-Snake Resource Advisory Council, OR, 19977
Northern California District Resource Advisory Council,
19975–19976

Realty Action:

Recreation and Public Purposes Act Classification and
Segregation for Philipsburg Park and Trails, Granite
County, MT, 19976–19977

National Foundation on the Arts and the Humanities

See Federal Council on the Arts and the Humanities

National Institute of Standards and Technology**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Request for Personal Radiation Monitoring Services,
19925–19926

Meetings:

Advisory Board, 19926

National Institutes of Health**NOTICES**

Privacy Act; Systems of Records, 19961–19964

National Oceanic and Atmospheric Administration**RULES**

National Marine Sanctuary Regulations, 19824–19829

NOTICES**Meetings:**

South Atlantic Fishery Management Council, 19926–
19927

Takes of Marine Mammals Incidental to Specified
Activities:

Whittier Head of the Bay Cruise Ship Dock Project in
Whittier, AK, 19927–19940

National Park Service**NOTICES****Inventory Completion:**

Central Washington University, Ellensburg, WA, 19977–
19978

Department of the Interior, Bureau of Indian Affairs,
Washington, DC, 19978–19983

Minnesota Indian Affairs Council, St. Paul, MN, 19983–
19986

Mutter Museum of the College of Physicians of
Philadelphia; Philadelphia, PA, 19984–19985

Occupational Safety and Health Administration**NOTICES****Meetings:**

Whistleblower Stakeholder Meeting: Outreach and
Training, 19990–19991

Ocean Energy Management Bureau**NOTICES**

Environmental Impact Statements; Availability, etc.:
SouthCoast Wind Energy, LLC's (Formerly Mayflower
Wind Energy, LLC) Proposed Wind Energy Facility
Offshore Massachusetts, 19986

Patent and Trademark Office**RULES**

Reducing Patent Fees for Small Entities and Micro Entities
Under the Unleashing American Innovators Act of
2022, 19862

Personnel Management Office**NOTICES**

Personnel Demonstration Project:
Pay Banding and Performance-Based Pay Adjustments in
the National Nuclear Security Administration,
19991–19993

Postal Regulatory Commission**NOTICES**

New Postal Products, 19993–19995

Presidential Documents**PROCLAMATIONS**

Special Observances:
Cesar Chavez Day (Proc. 10537), 19797–19798
Transgender Day of Visibility (Proc. 10538), 19799–19800

Securities and Exchange Commission**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 20014–20015
Self-Regulatory Organizations; Proposed Rule Changes:
Municipal Securities Rulemaking Board, 20004–20014
NYSE Arca, Inc., 19995–20002
Public Company Accounting Oversight Board, 20002–
20004

State Department**NOTICES**

Culturally Significant Object Being Imported for Exhibition:
Scripture and Science: Our Universe, Ourselves, and Our
Place, 20015
Statue of a Giant From Mont'e Prama, Sardinia, 20015

**Substance Abuse and Mental Health Services
Administration****NOTICES**

Meetings:
Substance Abuse and Mental Health Services
Administration National Advisory Council;
Correction, 19965

Requests for Nominations:

Organizations To Serve as Non-Voting Liaison
Representatives to the Advisory Committee on
Women's Services Subcommittee on Maternal Mental
Health, 19964–19965

Transportation Department

See Federal Aviation Administration

See Federal Railroad Administration

Treasury Department

See Foreign Assets Control Office

U.S. Citizenship and Immigration Services**NOTICES**

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:
Appeal or Motion, 19969–19970
Application for Action on an Approved Application or
Petition, 19970–19971
Citizenship and Integration Direct Service Grant Program,
19971–19972

United States African Development Foundation**NOTICES**

Meetings:
Board of Directors, 19903

Veterans Affairs Department**RULES**

Copayment Exemption for Indian Veterans, 19862–19873

Separate Parts In This Issue**Part II**

Health and Human Services Department, Centers for
Medicare & Medicaid Services, 20022–20057

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Proclamations:**

10537 19797
10538 19799

10 CFR

430 19801

14 CFR

33 19801
39 (2 documents) 19811,
19815
71 (6 documents) 19817,
19819, 19820, 19821, 19822,
19823

Proposed Rules:

71 19895

15 CFR

922 19824

21 CFR**Proposed Rules:**

1308 19896

28 CFR

0 19830

31 CFR

591 (2 documents) 19840,
19842

32 CFR

199 19844

33 CFR

100 (3 documents) 19856,
19857

37 CFR

1 19862
41 19862

38 CFR

17 19862

40 CFR

180 19873

Proposed Rules:

52 19901

42 CFR**Proposed Rules:**

418 20022
424 20022

50 CFR

17 19880

Presidential Documents

Title 3—

Proclamation 10537 of March 30, 2023

The President

César Chávez Day, 2023

By the President of the United States of America

A Proclamation

Today, we honor César E. Chávez by carrying on the cause—“La Causa”—to which he dedicated his life: championing the dignity and rights of every worker, using nonviolence to fight for justice, and standing with organized labor to build an economy that rewards work and not just wealth.

César E. Chávez came of age picking produce and cotton in the fields of California. He labored in intense heat, all too familiar with the harms of poisonous pesticides. And he learned early on about the power of organizing for basic dignity and respect through his work with Fred Ross and the Community Service Organization. Working alongside trailblazing labor activist Dolores Huerta and inspired by heroes like Dr. Martin Luther King, Jr. and Mahatma Gandhi, he founded the United Farm Workers of America in 1962. Over the following three decades, Chávez marched, fasted, and boycotted—campaigning for collective bargaining rights, a minimum wage, unemployment insurance, and better health and safety standards for his fellow workers. His courage opened America’s eyes to injustice and ushered in a new age of opportunity for farm workers and the working class.

On what would be his 96th birthday, Chávez’s life and legacy as a leader of the labor and civil rights movements continue to guide our efforts to grow our economy from the bottom up and the middle out—fighting every day for America’s working class. My Administration is creating good-paying jobs, protecting the retirement savings of millions of union workers, pushing to ban unfair non-compete agreements, and strengthening workers’ rights to organize. Since I took office, the Department of Labor has recovered \$16.3 million in back pay and damages—compensation employers owed to their employees—for nearly 20,000 farmworkers. This hard-earned money can mean a worker’s ability to pay rent, buy groceries, or save for their children’s futures.

The Department of Labor is also working on new rules to protect workers from extreme heat in the workplace, and it is conducting inspections in industries with high incidences of heat-related illnesses or deaths. Meanwhile, the Department of Agriculture has provided hundreds of millions of dollars in financial assistance to farmworkers and meatpacking workers for expenses incurred due to the COVID-19 pandemic. It has also helped agricultural employers to implement more robust health and safety standards.

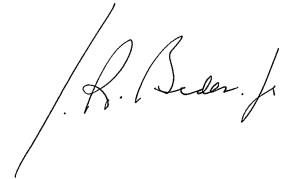
There is more work to do. That is why I continue to call for paid sick leave for every worker in America; for stronger organizing and collective bargaining rights; and for better conditions for people who work on farms, on ranches, and across the food and agricultural industry. I encourage the Congress to pass the Protecting the Right to Organize Act. I also encourage the Congress to pass the Farm Workforce Modernization Act to create a pathway to citizenship for farmworkers, who put food on our tables and sustain our Nation.

This César Chávez Day, as we celebrate an American hero, let us be united in our efforts to stand up for the dignity and rights of all workers. I proudly keep a bust of César E. Chávez in the Oval Office, which reminds me daily of my commitment to the Latino community and to the American

people. The First Lady has honored his legacy with the Chávez family in Keene and Delano, California, home of Chávez's movement. I want to ensure the American Dream is within reach of all who live in our Nation, not just because it is right for our economy, but because it is the right thing to do for humanity. In Chávez's own words, "The love for justice that is in us is not only the best part of our being, but it is also the most true to our nature."

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 March 31, 2023, as César Chávez Day. I call upon all Americans to observe this day as a day of service and learning, with appropriate service, community, and education programs to honor César E. Chávez's enduring legacy.

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

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

Presidential Documents

Proclamation 10538 of March 30, 2023

Transgender Day of Visibility, 2023

By the President of the United States of America

A Proclamation

Transgender Day of Visibility celebrates the joy, strength, and absolute courage of some of the bravest people I know—people who have too often had to put their jobs, relationships, and lives on the line just to be their true selves. Today, we show millions of transgender and nonbinary Americans that we see them, they belong, and they should be treated with dignity and respect. Their courage has given countless others strength, but no one should have to be brave just to be themselves. Every American deserves that freedom.

Transgender Americans shape our Nation's soul—proudly serving in the military, curing deadly diseases, holding elected office, running thriving businesses, fighting for justice, raising families, and much more. As kids, they deserve what every child deserves: the chance to learn in safe and supportive schools, to develop meaningful friendships, and to live openly and honestly. As adults, they deserve the same rights enjoyed by every American, including equal access to health care, housing, and jobs and the chance to age with grace as senior citizens. But today, too many transgender Americans are still denied those rights and freedoms. A wave of discriminatory State laws is targeting transgender youth, terrifying families and hurting kids who are not hurting anyone. An epidemic of violence against transgender women and girls, in particular women and girls of color, has taken lives far too soon. Last year's Club Q shooting in Colorado was another painful example of this kind of violence—a stain on the conscience of our Nation.

My Administration has fought to end these injustices from day one, working to ensure that transgender people and the entire LGBTQI+ community can live openly and safely. On my first day as President, I issued an Executive Order directing the Federal Government to root out discrimination against LGBTQI+ people and their families. We have appointed a record number of openly LGBTQI+ leaders, and I was proud to rescind the ban on openly transgender people serving in the military. We are also working to make public spaces and travel more accessible, including with more inclusive gender markers on United States passports. We are improving access to public services and entitlements like Social Security. We are cracking down on discrimination in housing and education. And last December, I signed the Respect for Marriage Act into law, ensuring that every American can marry the person they love and have that marriage accepted, period.

Meanwhile, we are also working to ease the tremendous strain that discrimination, bullying, and harassment can put on transgender children—more than half of whom seriously considered suicide in the last year. The Department of Education is, for example, helping ensure that transgender students have equal opportunities to learn and thrive at school, and the Department of Justice is pushing back against extreme laws that seek to ban evidence-based gender-affirming health care.

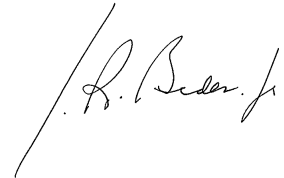
There is much more to do. I continue to call on the Congress to finally pass the Equality Act and extend long-overdue civil rights protections to all LGBTQI+ Americans to ensure they can live with safety and dignity.

Together, we also have to keep challenging the hundreds of hateful State laws that have been introduced across the country, making sure every child knows that they are made in the image of God, that they are loved, and that we are standing up for them.

America is founded on the idea that all people are created equal and deserve to be treated equally throughout their lives. We have never fully lived up to that, but we have never walked away from it either. Today, as we celebrate transgender people, we also celebrate every American's fundamental right to be themselves, bringing us closer to realizing America's full promise.

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 March 31, 2023, as Transgender Day of Visibility. I call upon all Americans to join us in lifting up the lives and voices of transgender people throughout our Nation and to work toward eliminating violence and discrimination against all transgender, gender nonconforming, and nonbinary people.

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

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

Rules and Regulations

Federal Register

Vol. 88, No. 64

Tuesday, April 4, 2023

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

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE-2016-BT-TP-0023]

RIN 1904-AD70

Energy Conservation Program: Test Procedure for Television Sets; Correction

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

ACTION: Final rule; correction.

SUMMARY: The U.S. Department of Energy (“DOE”) is correcting a final rule that appeared in the **Federal Register** on March 15, 2023. That document amended test procedures for television sets. This document corrects an amendatory error in that final rule.

DATES: Effective April 14, 2023.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-9870. Email: ApplianceStandardsQuestions@ee.doe.gov.

Ms. Celia Sher, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-6122. Email: celia.sher@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

I. Background

DOE published a final rule in the **Federal Register** on March 15, 2023 (March 2023 Final Rule), amending the test procedure for television sets. 88 FR 16082. This correction addresses numbering errors in the amendatory language in that final rule.

The amendatory instructions in the March 2023 Final Rule amend § 430.3 by redesignating paragraphs (n) through

(w) as paragraphs (o) through (x), respectively. 88 FR 16082, 16109. However, paragraph (p), which is being redesignated as (q) currently contains “Note 1 to paragraph (p)” and refers to “paragraphs (p)(1) through (9).” The amendatory instructions failed to revise this note to correctly refer to paragraph (q). Further, there is already another Note 1 within § 430.3 (see § 430.3(e)), so the numbering of these notes in § 430.3 was not properly sequenced, and the note in newly redesignated § 430.3(q) should have been numbered as Note 2.

II. Need for Correction

As published, the regulatory text in the March 2023 Final Rule may result in confusion due to incorrect section references. Because this final rule would simply correct errors in the text without making substantive changes in the March 2023 Final Rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the March 2023 Final Rule remain unchanged for this final rule technical correction. These determinations are set forth in the March 2023 Final Rule. 88 FR 16082, 16106–16109.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), DOE determines that notice and prior opportunity for comment on this rule are unnecessary and contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the March 2023 Final Rule or any of the conclusions reached in support of the final rule. For these reasons, DOE also determines that there is good cause to waive the 30-day delay in effective date in 5 U.S.C. 553(d).

Correction

In FR Doc. 2023-03986, appearing on page 16109 in the **Federal Register** of Wednesday, March 15, 2023, the following corrections are made:

- On page 16109, in the third column, correct amendatory instruction 4 by adding instruction 4.e. and correcting the regulatory text to read as follows:
4.e. In newly redesignated paragraph (q), removing Note 1 and adding Note 2.

§ 430.3 [Corrected]

* * * * *

(q) * * *

Note 2 to paragraph (q). The standards referenced in paragraphs (q)(1) through (9) are also available from ANSI. See paragraph (e) of this section.
* * * * *

Signing Authority

This document of the Department of Energy was signed on March 28, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 28, 2023.

Treena V. Garrett,
*Federal Register Liaison Officer, U.S.
Department of Energy.*

[FR Doc. 2023-06753 Filed 4-3-23; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No.: FAA-2018-0568; Amdt. No. 33-36]

RIN 2120-AK83

Medium Flocking Bird Test at Climb Condition

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

ACTION: Final rule.

SUMMARY: This final rule adds new test requirements to the airworthiness regulation addressing engine bird ingestion. The new test requirements ensure that turbofan engines can ingest

the largest medium flocking bird (MFB) into the engine core at climb or approach conditions. To obtain certification of a turbofan engine, a manufacturer must show the engine core can continue to operate after ingesting such a bird while operating at a lower fan speed associated with climb or approach.

DATES: Effective June 5, 2023.

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

FOR FURTHER INFORMATION CONTACT: Philip Haberlen, Federal Aviation Administration, Propulsion and Energy Section, Technical Innovation Policy Branch, Policy & Innovation Division, Aircraft Certification Services AIR 624, 1200 District Avenue, Burlington, Massachusetts 01803-5213; telephone (781) 238-7770; fax (781) 238-7199; email: philip.haberlen@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, Section 44701, General requirements. Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing minimum safety standards required in the interest of safety for performance of aircraft engines. This regulation is within the scope of that authority because it creates new safety-related testing requirements for certification of aircraft turbofan engines.

I. Executive Summary

A. Overview of Final Rule

The FAA is amending the airworthiness regulations related to engine bird ingestion testing in part 33 of title 14, Code of Federal Regulations (14 CFR) (notice of proposed rulemaking (NPRM) published at 83 FR 31479 on July 6, 2018). This final rule revises § 33.76 to create an additional bird ingestion test for turbofan engines. This new test ensures that engines can ingest the largest MFB required for bird ingestion testing into the engine core¹ at climb conditions. If the engine design is such that no bird material would be ingested into the engine core during the test at climb conditions, then the rule requires a different test at approach conditions.

The new testing required by this final rule consists of ingesting one MFB, equivalent to the largest bird required by § 33.76(c), for the engine inlet throat area of the engine being tested,² into the engine core, using either of the following climb or approach test conditions:

(1) *Testing for bird ingestion on climb (referred to in this final rule as “climb flocking bird test”).* The test bird must be fired at 261-knots (which is 250-knots indicated airspeed (KIAS)), with the mechanical engine fan speed set at the lowest expected speed when climbing through 3,000 feet altitude above mean sea level at International Standard Atmosphere (ISA) standard day conditions (hereafter referred to as MSL). After bird ingestion, the engine must comply with new post-test run-on requirements similar to those in § 33.76(d)(5) for large flocking birds, except that, depending on the climb thrust of the engine, during the first minute after bird ingestion the engine may produce less than 50 percent takeoff thrust.

(2) *Testing for bird ingestion on approach (referred to in this final rule as “approach flocking bird test”).* If the applicant determines, through testing or validated analysis, that no bird material will enter the core during the test at the

climb condition, then the applicant must perform the approach flocking bird test. For the approach flocking bird test, the bird must be fired at 209-knots (which is 200-KIAS), with the mechanical engine fan speed set at the lowest fan speed expected when descending through 3,000 feet MSL on approach. Applicants are required to comply with post-test run-on requirements that are the same as the final six minutes of § 33.76(d)(5) post-test run-on requirements for the large flocking bird (LFB) test. While the FAA based the approach run-on requirements of this final rule on the LFB post-test run-on requirements, only the last six minutes of the test is required, since during approach the airplane will already be lined up with the runway.

Additionally, this final rule allows the climb flocking bird test to be combined with the § 33.76(c) test when the climb first stage (fan) rotor speed is no more than three percent different from the first stage rotor speed, as required by § 33.76(c)(1). This allows manufacturers of engines for airplanes, where the pilot does not pull back on the throttle during climb, to perform one fewer ingestion test. Since the fan rotor speed during climb will be the same as the fan rotor speed at takeoff thrust, the amount of bird material ingested into the core during the climb flocking bird test will depend on bird speed and not fan speed.

This final rule also allows the applicant to use objects other than birds to meet the new test requirements.

B. Summary of Costs and Benefits

Over a 27-year period of analysis, the rule will result in present value net benefits of about \$9.7 million at a seven percent discount rate with annualized net benefits of about \$0.8 million. At a three percent discount rate, the 27-year present value net benefits is about \$36.2 million with annualized net benefits of about \$1.9 million.

The following table presents estimates of the quantified benefits, costs, and net benefits of the rule.

SUMMARY OF BENEFITS, COSTS, AND NET BENEFITS

[\$Millions]

Impact	27-Year total present value 7% present value	27-Year total present value 3% present value	Annualized 7% present value	Annualized 3% present value
Benefits	\$73.7	\$121.6	\$6.1	\$6.6

¹ Turbofan engines have fan and core compressor sections. The fan or low-pressure compressor is at the front of the engine. The core consists of

additional compressor stages behind the fan. Each compressor stage consists of a rotating row of blades and a stationary row of vanes.

² Section 33.76(c) addresses small and medium bird ingestion requirements.

SUMMARY OF BENEFITS, COSTS, AND NET BENEFITS—Continued
[\$Millions]

Impact	27-Year total present value 7% present value	27-Year total present value 3% present value	Annualized 7% present value	Annualized 3% present value
Costs	64.0	85.4	5.3	4.7
Net Benefits	9.7	36.2	0.8	1.9

II. Background

A. Statement of the Problem

On January 15, 2009, US Airways Flight 1549 (Flight 1549), an Airbus A320, took off from La Guardia Airport in New York City. On climb, at approximately 2,800 feet above ground level (AGL) and approximately 230–KIAS, the airplane struck a flock of migratory Canada geese. Both of the airplane's engines ingested at least two birds, and both engine cores suffered major damage and total thrust loss.

The A320 series of airplanes (*i.e.*, A318/A319/A320/A321) and the similarly sized Boeing 737 series of airplanes are among the airplanes most frequently used by air carriers.³ Most transport airplanes (including the A320) and many business jets use turbofan engines that are susceptible to bird ingestion damage, which, in some instances, has resulted in loss of greater than 50 percent takeoff thrust. In twin-engine airplanes, this amount of thrust loss in both engines can prevent the airplane from climbing over obstacles or maintaining altitude. Significant loss of thrust by more than one engine is a hazardous condition because it can prevent continued safe flight and landing.

As a result of the Flight 1549 accident, the FAA began studying how to improve engine durability related to core engine bird ingestion.⁴ In response to a tasking from the FAA to review and study bird ingestion standards and guidance, the Aviation Rulemaking Advisory Committee (ARAC) established the Engine Harmonization

Working Group (EHWG) under the Transport Airplane and Engine subcommittee. The EHWG developed a report, subsequently accepted by the ARAC, titled "Turbofan Bird Ingestion Regulation Engine Harmonization Working Group Report" (ARAC report), dated February 19, 2015.⁵ The ARAC report concluded that modern fan blades (such as those on the Flight 1549 airplane engines) have relatively wider fan blade chords than those in-service when the FAA implemented the MFB ingestion test in 14 CFR 33.76(c) (65 FR 55848, September 14, 2000). The ARAC report also pointed out that the § 33.76(c) test is conducted with the engine operating at 100 percent takeoff power or thrust. This setting is ideal for testing the fan blades but does not represent the lower fan speeds used during the climb and approach phases of aircraft flight.

When an engine ingests a bird, the amount of bird material that enters the engine core depends on: (1) the width of the fan blade chord, (2) the airplane's speed, and (3) the rotational speed of the fan blades. The wider the chord of the fan blade and the lower the speed of the airplane, the longer the bird will remain in contact with the fan blade. As airplane speed increases, the bird spends less time on the fan blade. With higher fan speed, the bird will move radially faster away from the core. Thus, the longer the time in contact with the fan blade, from wider blades and lower airspeed, and increased centrifugal forces from a higher fan speed, the further outboard and away from the core the bird material will move. Therefore, a higher fan speed makes it less likely that bird material will enter the core during the § 33.76(c) test compared to the new climb flocking bird test. Conversely, a lower fan speed and higher airspeed, for a given fan blade width, make it more likely that the bird material will enter the core.

The § 33.76(c) test is conducted using 100 percent power or thrust and the most critical airspeed up to 1,500 feet

AGL. Consequently, the § 33.76(c) test does not simulate lower fan speed phases of flight (such as climb and descent) during which a bird, if ingested, is more likely to enter the engine core. In addition, the higher airspeed in climb is not covered by the § 33.76(c) test. Therefore, the small and medium flocking bird test prescribed in § 33.76(c) does not fully provide the intended demonstration of core durability against bird ingestion for the climb and approach conditions.

B. National Transportation Safety Board (NTSB) Recommendations

As part of its report⁶ on Flight 1549, the NTSB issued two relevant engine-related safety recommendations to the FAA:

(1) *A-10-64*: Modify the small and medium flocking bird certification test standard to require that the test be conducted using the lowest expected fan speed, instead of 100 percent fan speed, for the minimum climb rate.

(2) *A-10-65*: During re-evaluation of the current engine bird-ingestion certification regulations by the Bird Ingestion Rulemaking Database working group, specifically re-evaluate the large flocking bird certification test standards to determine if they should:

(a) Apply to engines with an inlet area of less than 2.5 square meters (3,875 square inches).

(b) Include an engine core ingestion requirement.

If re-evaluation determines the need for these requirements, incorporate them into 14 CFR 33.76(d) and require that newly certificated engines be designed and tested to these requirements.

The ARAC report addressed both NTSB safety recommendations. In response to NTSB safety recommendation A-10-64, the ARAC

³ https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2019-39_FAA_Aerospace_Forecast.pdf, pp 31–32, "U.S. Commercial Aircraft Fleet."

⁴ The FAA used the following studies to begin the review: FAA Technical Center Report DOT/FAA/AR-TN03/60, "Study of Bird Ingestions Into Aircraft Turbine Engines (December 1968–December 1999)," September 2003, and the "Aerospace Industries Association (AIA) Bird Ingestion Working Group Interim Report—January 2012," produced after the Flight 1549 accident. The AIA report contains the latest bird ingestion data available through January 2009, including data from the Flight 1549 accident. The FAA included both reports in the docket for this rulemaking.

⁵ The FAA included the ARAC report in the docket for this rulemaking. This rulemaking is consistent with the recommendations in the report.

⁶ Loss of Thrust in Both Engines After Encountering a Flock of Birds and Subsequent Ditching on the Hudson River, US Airways Flight 1549, Airbus A320-214, N106US, Weehawken, New Jersey, January 15, 2009, Aircraft Accident Report NTSB/AAR-10/03 (Washington, DC: NTSB, 2009) (hereinafter "NTSB report AAR-10/03" available at <https://www.ntsb.gov/investigations/Pages/DCA09MA026.aspx>).

report recommended the test adopted in this final rule. The ARAC report found that its recommendation would also address the intent of NTSB safety recommendation A-10-65 since the kinetic energy of the bird in this final rule is of the same magnitude as a LFB test.

III. Discussion of Public Comments and Final Rule

The FAA received comments on the NPRM from 12 commenters. Specifically, the FAA received comments from Pratt & Whitney U.S.A. (Pratt & Whitney); Honeywell International; Pratt & Whitney Canada Corporation (Pratt & Whitney Canada); The Boeing Company; General Electric (GE); Aerospace Industries Association (AIA); Rolls-Royce; Air Line Pilots Association, International (ALPA); the National Transportation Safety Board (NTSB), and three individuals. The FAA received supportive comments on the NPRM from the NTSB and one individual. While a number of commenters requested changes, commenters generally supported the proposal. The NTSB expressed general support for the NPRM and noted the proposed rule, when implemented, would satisfy the intent of NTSB Safety Recommendation A-10-64.⁷

A. Fan Speed Difference Criteria for Combining the Existing MFB Test (§ 33.76(c)) and the New Climb Flocking Bird Test (§ 33.76(e)(1))

In the NPRM, the FAA proposed allowing applicants to combine the new climb flocking bird test with the existing § 33.76(c) test if the fan speed at climb is within 1 percent of the fan speed at takeoff. The purpose of the proposed 1 percent limit on the difference between the climb and takeoff fan speed was to ensure the combined test would apply only to engines designed such that the typical operational practice will be to maintain the throttle in the takeoff position through the climb phase. However, even with the throttle in the same position, both fan and core rotor speeds will change to some extent with altitude and aircraft speed.

AIA, Pratt & Whitney, Pratt & Whitney Canada, Honeywell International, The Boeing Company, GE, and one individual commented on the proposed allowance for combining the new test with the § 33.76(c) test. These commenters stated the proposed one

percent difference in fan rotor speed at takeoff and climb conditions in § 33.76(e)(4) is too restrictive.

Commenters further stated the in-service difference between climb and takeoff fan rotor speeds is in the range of three percent to five percent, and recommended the FAA allow applicants to combine the tests when the fan rotor speed difference was no greater than three percent.

This final rule allows combining the MFB test and the new test at climb condition when the difference in the climb and takeoff fan rotor speeds is no more than three percent. The NTSB accident report for the Flight 1549 accident states that Flight 1549 impacted birds at approximately 2,800 feet altitude AGL and ~82 percent fan speed; well below the maximum takeoff setting.⁸ The ARAC report states that many air carriers operating transport category airplanes use reduced thrust or derated takeoff power settings. Operators may use reduced thrust or derated takeoff power settings because they may provide substantial benefits in terms of engine reliability, maintenance, and operating costs, while operating at lower fan speeds than the maximum takeoff thrust rating. Climb power settings on large transport airplanes are also significantly lower than maximum takeoff settings. Smaller jet aircraft with small throat inlets are not typically certified to perform reduced thrust or derated takeoffs (*i.e.*, all takeoffs are completed at max rated takeoff thrust), and climb power settings on most smaller corporate aircraft are typically close to the maximum takeoff thrust rating.

The FAA agrees with the commenters' recommendation to allow combining the new climb flocking bird test with the existing MFB test in § 33.76(c) when the difference between climb and takeoff fan rotor speeds is no more than three percent. It would be overly restrictive to limit the allowable variation to one percent when the in-service difference between climb and takeoff fan rotor speeds, with no change in throttle position, is typically in the range of three percent to five percent. As a result, § 33.76(e)(4) allows applicants to combine the existing MFB and new climb flocking bird tests if the engine's climb fan rotor speed is within three percent of the fan rotor speed required in the MFB test under § 33.76(c). Combining the tests when the fan rotor speed is within 3 percent will have no effect on the efficacy of the test because the bird for the test at climb condition

will be fired at the higher bird speed and a fan rotor speed consistent with actual operations.

B. Consistent Usage of Bird Airspeed and Altitude Units (§ 33.76(e)(1)(i)(C) and (e)(2)(i)(C))

The NPRM proposed a bird speed of 250-knots for the new climb flocking bird test and 200-knots for the new approach flocking bird test. Honeywell International, The Boeing Company, AIA, Pratt & Whitney, and GE stated that the NPRM used "knots" and "knots indicated airspeed" (KIAS) inconsistently. Knots, KIAS, and knots true airspeed (KTAS) can refer to different physical speeds. The commenters also stated that the ARAC working group intended for the bird in the climb flocking bird test to be fired at the equivalent of 250-KIAS at an altitude of 3,000 feet MSL using ISA conditions, and 200-KIAS at an altitude of 3,000 feet MSL using ISA conditions for the approach flocking bird test. Therefore, to achieve consistency with the ARAC working group recommendation, the commenters concluded the climb and approach flocking bird tests should be performed with fan speeds representative of the lowest possible fan rotor speed at these conditions, and the bird velocities should be 261-KTAS for the climb flocking bird test, and 209-KTAS for the approach flocking bird test.

KIAS measures airspeed modified to account for the altitude pressure effect. KTAS is the speed of the aircraft relative to the air mass through which it is flying. During a bird ingestion event, KTAS is the effective speed of the bird relative to the aircraft. The NPRM did not specify the altitude at which KIAS was based. For the climb flocking bird test, 250-KIAS at 3,000 feet MSL equates to a bird speed of 261-KTAS at sea level. For the approach flocking bird test, 200-KIAS at 3,000 feet MSL equates to a bird speed of 209-KTAS at sea level. In this final rule, the FAA has revised the proposed § 33.76(e)(1)(i)(C) from "Ingestion must be at 250-knots bird speed," to "Ingestion must be at 261-knots true airspeed." The FAA also revised the proposed § 33.76(e)(2)(i)(C), from "Ingestion must be at 200-knots bird speed" to "Ingestion must be at 209-knots true airspeed."

In the NPRM, the agency proposed that the engine must be stabilized during the test at the mechanical rotor speed of the first exposed fan stage or stages that, on a standard day, produce the lowest expected power or thrust required during climb through 3,000 feet AGL. MSL will establish more consistent test conditions than AGL

⁷ NTSB further stated in its comment that, "Recommendation A-10-65 was classified 'Closed—Acceptable Action' on March 1, 2016, in part because the ARAC found that the new climb condition MFB test will further assure the robustness of the engine core."

⁸ NTSB report AAR-10/03 at paragraph 2.8.1, page 98, and paragraph 1.16.1, page 47.

because the flight conditions for the engine using AGL may vary based upon the ground level altitude above sea level. For example, 3,000 feet above Denver International Airport (5,434 feet above sea level) is 8,434 feet MSL; 3,000 feet above Boston Logan International Airport (19 feet above sea level) is 3,019 feet MSL. Using MSL defines the engine conditions consistent with the commenters' request that the standard refer to 3,000 feet at ISA conditions. The FAA has revised § 33.76(e)(1)(i)(A) for the climb flocking bird test to require the fan rotor speed to be set to the lowest expected power or thrust required during climb through 3,000 feet MSL instead of 3,000 feet AGL.

The NPRM proposed in § 33.76(e)(2)(i)(A) that the engine must be stabilized during the test at the mechanical rotor speed of the first exposed fan stage or stages when on a standard day the engine thrust is set at approach idle thrust when descending 3,000 feet AGL. The FAA also revised § 33.76(e)(2)(i)(A) for the approach flocking bird test to require the fan speed be set to the lowest expected power or thrust required during descent through 3,000 feet MSL instead of 3,000 feet AGL, based on the same rationale as the climb flocking bird test.

Finally, changing AGL to MSL will not result in different test conditions than those proposed in the NPRM. For turbofan engines, power or thrust is proportional to fan speed. The lowest fan speed for a given climb thrust at standard day conditions and 3,000 feet AGL is equivalent to 3,000 feet MSL. In addition, changing the altitude units to MSL makes the altitude reference consistent with the requirement to have the lowest fan speed at standard day conditions.

C. Removal of Reference to Approach Flocking Bird Test (§§ 33.76(e)(4))

The NPRM preamble discussed the circumstances under which applicants could combine the proposed climb flocking bird test with the existing § 33.76(c) test; however, the proposed regulatory text in § 33.76(e)(4)(ii) provided that the proposed approach flocking bird test could also be combined with the § 33.76(c) test. Honeywell International and GE commented that proposed § 33.76(e)(4)(ii) should not be included in the final rule. Honeywell International further explained that there is no scenario where the fan speed at the approach condition will be within one percent, or even the recommended three percent, of the max takeoff thrust fan speed. The FAA agrees that applicants may only combine the climb

flocking bird test with the § 33.76(c) test since the conditions of the approach flocking bird test are not consistent with the § 33.76(c) test. Therefore, in this final rule, § 33.76(e)(4) does not include a reference to the approach flocking bird test.

D. Proposal To Exclude Engine Inlets Greater Than 3.90 Square Meters

In the NPRM, the FAA proposed that either the climb or approach flocking bird test would be required for all turbofan engines in addition to the existing § 33.76(c) test. GE commented that engines with inlet areas of 3.90 square meters (6,045 square inches) or greater, known as Class A size engines, should be excluded from the requirement to perform the new test. Specifically, GE asserted that engines should be excluded when the applicant can show that the proposed type design for an engine has design features and functions consistent with the applicant's successful MFB ingestion based on field service experience and core ingestion compliance demonstrations with previously certified engine types. GE reasoned that the ARAC report shows that the data in the Aerospace Industries Association Bird Ingestion Working Group Interim Report contained no reported loss of power events associated with core bird ingestion into Class A size turbofan engines between 1999 and 2009. GE also stated that its recent compliance testing results provide clear evidence of core ingestion. Therefore, compliance with the MFB ingestion requirements found in § 33.76(c) will present an appropriate and operationally relevant MFB ingestion challenge for the largest size class of engines.

The FAA notes that between 2000 and 2009, there were between 12 and 20 million airplane flight cycles (a flight cycle includes a takeoff and landing) per year with Class D size engines (1.35m²–2.5m² inlet areas, the same size as the engines on the US Airways Flight 1549 airplane). During that same time, there were less than 2 million airplane flight cycles with Class A size engines per year. Along with the low overall number of engine power loss events, this low number of airplane flight cycles makes it difficult to statistically establish that the prior service history of Class A size engines between 2000 and 2009 is sufficient to prove that the airplane is protected from hazards due to engine core ingestion during climb, based on the engine inlet area alone.

Additionally, the ARAC report did not make an exception for Class A size engines or other engine sizes with relatively few core power loss events.

Instead, section 5 of the ARAC report indicates that the § 33.76(c) core ingestion demonstration criteria did not adequately represent the most critical flight phase with respect to core ingestion due to the combination of high fan rotor speed and low aircraft speed. The ARAC report discusses the effects of rotor speed and low aircraft speed on core ingestion in paragraph 3.2.

With respect to GE's comment that signs of bird material are consistently found on the spinner or in the core inlet area after the § 33.76(c) test and therefore are a reliable indicator of the core flow path, the FAA does not concur. The ARAC report addressed this topic in paragraph 4.3, Differentiating Between Core Induced Power Loss vs. Material in the Core. The ARAC report stated:

It is believed that the presence of bird remains within the engine core is not a reliable indicator of significant core ingestion because bird strikes on aircraft structure other than the core intake area, such as the inlet lip, spinner cap, and radome, regularly result in some amount of avian material entering the core.⁹

Based on the information in the ARAC report, the FAA determined that during a certification test, it is not possible to accurately measure the amount of bird material that entered the core, as opposed to bypassing the core. Testing the engine at the climb condition is the best way to ensure significant bird material enters the core. Therefore, consistent with the NPRM, this final rule does not except Class A engines.

E. Using MFB Test To Meet Core Ingestion Requirement

The NPRM proposed that either the climb or approach flocking bird test would be required for all turbofan engines in addition to the existing § 33.76(c) test, regardless of the results of the § 33.76(c) test. GE commented that the approach flocking bird test proposed in the NPRM should not be required if bird material entered the core during the § 33.76(e)(1) climb flocking bird test or the § 33.76(c) test, because ingestion of bird material during the § 33.76(c) test would demonstrate sufficient core robustness against bird ingestion. In addition, GE commented that based on its experience, the core capability could be demonstrated using the § 33.76(c) test.

The ARAC found that bird velocity is predicted to have the greatest influence on the amount of bird ingested into the

⁹ ARAC report at p. 25.

core for a given design.¹⁰ Also, generally, for a given bird velocity, the amount of ingested bird material into the core is inversely proportional to the fan rotor speed. Therefore, the new climb flocking bird test in the new § 33.76(e)(1) will provide a more representative demonstration of core capability than the § 33.76(c) test due to the higher bird velocity and lower rotor fan speed required by the climb flocking bird test.

Additionally, the FAA proposed that the approach flocking bird test would only be required if testing or validated analysis shows that no bird material will be ingested into the engine core during the § 33.76(e)(1) climb flocking bird test. As stated in the NPRM, testing at the 200-KIAS (209-KTAS) approach condition would ensure that, if the engine is designed to centrifuge all bird material away from the core flow path at takeoff and climb conditions (which is beneficial), then engine core capability to ingest bird material would still be tested. This is because an engine that centrifuges bird material away from the core at the 250-KIAS (261-KTAS) climb condition may not be able to centrifuge away the same amount of bird material at the lower speed approach condition. The NPRM stated that the approach flocking bird test would only be required if testing or validated analysis shows that no bird material will be ingested into the engine core during the § 33.76(e)(1) climb flocking bird test. Consequently, the FAA did not change the rule as a result of comments seeking to exclude the approach flocking bird test if material entered the core during the § 33.76(c) test.

F. Approach Flocking Bird Test Run-On Requirement Wording

In the NPRM, the FAA proposed post-test bird ingestion run-on requirements for the new climb and approach flocking bird tests. Rolls-Royce, Honeywell International, The Boeing Company, AIA, Pratt & Whitney, and GE suggested the NPRM preamble description of the engine run-on requirements for the approach flocking bird test was confusing. The NPRM preamble stated that applicants would be required to comply with the same post-test run-on requirements as those for the final six minutes of the existing § 33.76(d)(5) post-test run-on requirements for LFB. The NPRM preamble also stated that the post-test run-on requirements for the proposed approach flocking bird test would consist of the final seven minutes

of the existing LFB 20-minute post-ingestion run-on requirement.

The FAA clarifies that the phrase “final seven minutes” in the NPRM preamble included a 1-minute period after ingestion when the engine throttle must not be manipulated, followed by the final six minutes of the LFB run-on requirement. Consistent with the preamble discussion, the proposed regulatory text in § 33.76(e)(2)(iii) included a total of both the 1-minute delay after ingestion and the final six minutes of the LFB run-on. Therefore, in this final rule, the FAA adopts § 33.76(e)(2)(iii) as proposed.

G. MFB Bird Speed (§ 33.76(c))

Honeywell International, The Boeing Company, AIA, Pratt & Whitney, and GE commented that the NPRM preamble improperly described the § 33.76(c) bird speed requirement. The NPRM preamble stated that the MFB test is conducted using 100 percent power or thrust and 200-knots airspeed, simulating takeoff conditions. However, § 33.76(c) states that the critical bird ingestion speed should reflect the most critical condition within the range of airspeeds used for normal flight operations up to 1,500 feet AGL, but not less than V_1 minimum for airplanes. Therefore, while the NPRM preamble’s description of the § 33.76(c) bird speed requirement was inaccurate, the proposed regulatory text was correct.

H. Number of Required Tests

The NPRM preamble stated that it was unlikely that manufacturers would need to run multiple tests to meet the proposed test requirements. GE questioned the accuracy of this assertion, requesting that the FAA acknowledge the possibility that the proposal could result in two additional ingestion tests.

The FAA has determined that manufacturers are unlikely to have to run two additional tests because the agency expects that manufacturers will evaluate the design of their engines before testing and should be able to determine whether engines will centrifuge all bird material away from the engine core. In this final rule, a manufacturer may perform either the climb or approach test; however, they would perform the approach test only if testing or a validated analysis shows that no bird material will enter the engine core. By performing a validated analysis to determine whether an engine will centrifuge all bird material away from the engine core during the climb flocking bird test, a manufacturer will be able to know ahead of time whether to run either the climb or the approach

flocking bird test.¹¹ Therefore, while it is possible that the final rule could result in two additional ingestion tests, it remains unlikely.

The FAA notes that the ARAC report found that various engine manufacturer simulation results have shown that, in general for a given bird velocity, the amount of ingested bird material into the core is inversely proportional to the fan rotor speed.¹² During the ARAC working group study, at least three different engine manufacturers who had conducted these simulations presented engineering analyses predicting how much bird material would enter the core after ingestion (See Figure 3.2.2 of the ARAC report). This indicated that industry has the capability to determine before the test, whether engines will centrifuge all bird material away from the engine core.

I. Canada Geese

As noted by Honeywell International, AIA, and Pratt & Whitney, the NPRM incorrectly referred to the birds ingested into the engines of Flight 1549 as “Canadian geese” rather than “Canada geese.” The preamble to this final rule uses the term “Canada geese,” reflecting the proper bird identification.¹³

J. Regulatory Evaluation Costs

The NPRM summarized the results of the FAA evaluation of the costs and benefits associated with the proposal. GE disagreed with the total benefits and costs of the proposed rule as described in the NPRM. The commenter expressed that the cost and benefit analyses do not include the additional incremental cost to develop and mature the technology to pass the additional certification test(s) and to conduct and pass the additional certification test(s).

The commenter’s costs discussion shows that it is possible that the cost to design and develop engine blades and vanes to comply with the new rule could be significantly different from those estimated in the preliminary regulatory impact analysis. While the new test is intended to increase the amount of bird material entering the engine core relative to the existing § 33.76(c) test, the fundamental requirement for blades and vanes behind the fan to withstand foreign object damage from bird ingestion has not changed. Since § 33.76 at Amendment 20 (65 FR 55848, September 14, 2000), applicants have

¹¹ Advisory Circular 33.76–1B, published with this final rule, provides guidance for using a validated core ingestion prediction analysis.

¹² ARAC report at p. 17, 18.

¹³ NTSB report AAR–10/03 at section 1.18.1.2, “Canada Goose Information.”

¹⁰ ARAC report at p. 17, 18.

been required to aim the largest MFB at the engine core primary flow path. In addition, other regulations (such as § 33.78(a)(1) for hailstone ingestion) have also required applicants to account for potential impact damage when designing their core engine blades and vanes. The need for new engineering analysis, development tools, and methods when developing a new blade to meet this final rule's new test requirement will vary among manufacturers depending on the physical design of their engines, their development philosophy, and their tolerance for risk during the certification process. For example, an engine manufacturer who designs its engine so no material would enter the engine core during either the climb or approach condition could have zero developmental costs due to the new regulation. Others might desire or require additional developmental work to ensure a future engine would meet the new requirement. The FAA has revised the regulatory analysis to address the potential for pre-certification developmental costs.

GE also criticized the analysis as significantly underestimating production costs. The commenter stated that, for example, a production rate of nearly 3,000 engines per year should be used instead of the FAA estimate of 220 engines per year. The FAA contacted the commenter to clarify whether its comment was based on the belief that the FAA was estimating 220 affected engines would be produced per year in total. The FAA asked if the commenter believed that instead, the total number of engines produced by all engine manufacturers in one year should be closer to 3,000. The commenter responded that it thought the 220 engines produced per year were for all manufacturers. The commenter mentioned the CFM International LEAP engine production rate is nearly 3,000 engines per year as an example. Therefore, the commenter believes the total of 220 engines given in the benefits and costs analysis of the NPRM is too low.

The FAA clarifies that the 220 engines in its economic analysis are per new engine certification (*i.e.*, one certification for each manufacturer). More specifically, in the regulatory evaluation, the FAA estimated that three engines would be certified every year and two additional engines would be certified every three years. Additionally, the FAA assumed production of the engines would begin one year after certification. Finally, the FAA estimated that, on average, 220 engines would be produced per year, per certification. To

calculate engines in-service that would be affected by this final rule, the FAA assumes the estimated average service life of an engine is about 16 years.

Therefore, in the first year of compliance, the FAA estimated five engines would be certified with 1,100 engines produced. In the second year, three more engines are certified, and in the following year, an additional 660 engines would be produced. In the third year, another three certifications occur with an additional 660 engines produced. In the fourth year, five engines would be certified with another 1,100 engines produced. After 10 years, the engines produced from the tenth year would be installed the following year and continue in-service for 16 years. The number of affected engines reach a maximum in the twelfth year and, with no attrition, there are 8,360 engines in-service until year 18 when the engines in operation begin to retire. After 27 years, all the affected engines would be retired. See "Table 1. Engine Certifications and Aircraft in Service Forecast" of the Regulatory Evaluation for details.

The FAA's estimate of 220 engines produced per year, per certification, is based on the average production rate per year, from 1989 to 2015, for the V2500 engine. The V2500 engine is installed on the Airbus A320 airplane and the MD-80 airplane. Larger engines like the GE90 (installed on the Boeing 777) would be produced at a lower average rate and smaller engines like the CF34 (regional jet) would be produced at a higher average rate.

The FAA compared the estimate of 220 engines per year against the data for engines previously certified to determine if the 220 estimate is too low. This rule only affects engines with a certification date of application after the effective date of the final rule and does not affect the CFM International LEAP engine. The data shows that the average production rate per year from 2008 to 2017 for the V2500 engine is 182 engines per year. Furthermore, the average production of certified engines from 2008 to 2017 is even less (108 engines per year). For this reason, the FAA's use of 220 engines per certification to estimate the operating cost of this rule is justified.

K. Miscellaneous Changes Between the NPRM and the Final Rule

In the NPRM, proposed § 33.76(e)(1)(iii)(D) included the allowance that "Power lever movement in this condition is unlimited" for that segment of the climb flocking bird test. The FAA inadvertently omitted a similar allowance in proposed

§ 33.76(e)(2). To correct this omission and make the approach flocking bird test schedule consistent with the climb flocking bird test schedule, the FAA added "Power lever movement in this condition is unlimited" to the end of § 33.76(e)(2)(iii)(C) in this final rule.

The FAA modified the proposed test requirements in paragraphs (e)(1)(i)(B) and (e)(2)(i)(B) to § 33.76, to clarify that only one bird is required for the climb flocking bird test and approach flocking bird test added by this final rule.

Section 33.76(a)(5) allows applicants to substitute objects that are accepted by the Administrator for birds when conducting the existing bird ingestion tests. The FAA amended § 33.76(a)(5) by adding a reference to new § 33.76(e) for consistency with the allowance for other bird ingestion tests.

In order to be consistent with the existing wording in § 33.76(b) through (d), the FAA does not use the word "fan" in this final rule when describing the first exposed rotor stage in § 33.76(e)(1)(i)(A) and (D), (e)(2)(i)(A) and (D), and (e)(4).

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules, that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995; current value is \$155 million). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. The FAA suggests readers seeking greater detail read the

full regulatory evaluation, a copy of which is available in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) has benefits that justify its costs; (2) is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866; (3) is not “significant” as defined in DOT’s Regulatory Policies and Procedures; (4) will not have a significant economic impact on small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified

above. These analyses are summarized below.

Total Benefits and Costs of This Rule

The FAA is amending certain airworthiness regulations to add a new test requirement to the airworthiness regulation addressing engine bird ingestion. This final rule ensures that engines can ingest the largest MFB into the engine core at climb or approach conditions. The ingestion of MFB can cause thrust loss from core engine bird ingestion if enough bird mass enters the engine core, which in turn can cause an accident or flight diversion. This rule adds to the certification requirements of turbofan engines, a requirement that manufacturers must show that their engine cores can continue to operate

after ingesting an MFB while operating at a lower fan speed associated with climb or approach. Engine manufacturers have the capability of producing such engines.

The FAA estimates the annualized cost of the rule to be \$5.3 million, or present value \$64.0 million over 27 years (discounted at 7 percent).¹⁴ The FAA estimates the annualized benefits of the rule to be \$6.1 million, or present value \$73.7 million over 27 years (discounted at 7 percent). The following table summarizes the benefits and costs of this final rule. The FAA has revised the analysis of costs for the final rule based on information received during the public comment period (for details see section J. Regulatory Evaluation Costs).

SUMMARY OF BENEFITS AND COSTS
[\$Millions]

Impact	27-Year total present value 7% present value	27-Year total present value 3% present value	Annualized 7% present value	Annualized 3% present value
Benefits	\$73.7	\$121.6	\$6.1	\$6.6
Costs	64.0	85.4	5.3	4.7
Net Benefits	9.7	36.2	0.8	1.9

1. This rule addresses two engine-related safety recommendations that the NTSB issued to the FAA: (1) A–10–64 and (2) A–10–65.

2. Who is potentially affected by this rule?

Aircraft operators and engine manufacturers.

3. Assumptions

The benefit and cost analysis for the regulatory evaluation is based on the following assumptions:

- The analysis is conducted in constant dollars with 2020 as the base year.
- The FAA calculated the present value of the potential benefits by discounting the monetary values following the Office of Management and Budget guidance using a 7 percent and a 3 percent interest rate.
- The analysis period is 27 years with 10 years of new engine certifications.
- Based on the actual production numbers of a common airline engine, the FAA estimates that about 220 engines are produced per year per certification.

- Because of this final rule, the average fuel consumption will increase by \$821 per year per aircraft.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

Two groups will be affected by this rule: aircraft operators and engine manufacturers.

The FAA has determined that this final rule will not have a significant economic impact on small aircraft operators. Operators will incur higher fuel burn costs due to an increase in engine weight (heavier blading, components, etc.), and consequently, an increase in total aircraft weight. The FAA estimates fuel burn costs of \$750 per year per aircraft, which the FAA has determined will not result in a significant economic impact for small aircraft operators.

Similarly, the FAA has determined that this final rule will not have a significant economic impact on engine manufacturers. The FAA identified one out of five engine manufacturers that meet the Small Business Administration definition of a small entity. The annual revenue estimate for this manufacturer is about \$75 million.¹⁵ The FAA then compared this manufacturer’s revenue with its annualized compliance cost. The FAA expects that the manufacturer’s projected annualized cost would be 0.3 percent of its annual revenue,¹⁶ which the FAA has

¹⁴ The FAA uses a 27-year period of analysis since it represents one complete cycle of actions affected by the rule. One life cycle extends through

the time required for certification, production of the engines, engine installation, active engine service, and retirement of the engines.

¹⁵ Source: <http://www.manta.com>.

¹⁶ Ratio = annualized cost/annual revenue = \$220,355/\$74,800,000 = 0.3%.

determined is not a significant economic impact.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

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

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no

new requirement for information collection associated with this final rule.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

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

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying 14 CFR regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. The FAA has determined that this rule would not affect intrastate aviation in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

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

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

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a “significant energy action” under the

Executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The agency has determined that this action will eliminate differences between U.S. aviation standards and those of other civil aviation authorities by ensuring that § 33.76 remains harmonized with European Union Aviation Safety Agency Certification Specification CS–E 800.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the internet—

1. Search the Federal eRulemaking Portal (www.regulations.gov);
2. Visit the FAA’s Regulations and Policies web page at www.faa.gov/regulations_policies/; or
3. Access the Government Printing Office’s web page at www.GovInfo.gov.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680.

B. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 33

Bird ingestion.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

■ 1. The authority citation for part 33 continues to read as follows:

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

■ 2. Amend § 33.76 by revising the introductory text to paragraph (a) and paragraphs (a)(1) and (5) and adding paragraph (e) to read as follows:

§ 33.76 Bird ingestion.

(a) *General.* Compliance with paragraphs (b) through (e) of this section shall be in accordance with the following:

(1) Except as specified in paragraphs (d) and (e) of this section, all ingestion tests must be conducted with the engine stabilized at no less than 100 percent takeoff power or thrust, for test day ambient conditions prior to the ingestion. In addition, the demonstration of compliance must account for engine operation at sea level takeoff conditions on the hottest day that a minimum engine can achieve maximum rated takeoff thrust or power.

* * * * *

(5) Objects that are accepted by the Administrator may be substituted for birds when conducting the bird ingestion tests required by paragraphs (b) through (e) of this section.

* * * * *

(e) *Core flocking bird test.* Except as provided in paragraph (e)(4) of this section, for turbofan engines, an engine test must be performed in accordance with either paragraph (e)(1) or (2) of this section. The test specified in paragraph (e)(2) must be conducted if testing or validated analysis shows that no bird material will be ingested into the engine core during the test under the conditions specified in paragraph (e)(1).

(1) *Climb flocking bird test.* (i) Test requirements are as follows:

(A) Before ingestion, the engine must be stabilized at the mechanical rotor speed of the first exposed stage or stages that produce the lowest expected power or thrust required during climb through 3,000 feet above mean sea level (MSL) at standard day conditions.

(B) The climb flocking bird test shall be conducted using one bird of the

highest weight specified in table 2 to this section for the engine inlet area.

(C) Ingestion must be at 261-knots true airspeed.

(D) The bird must be aimed at the first exposed rotating stage or stages, at the blade airfoil height, as measured at the leading edge that will result in maximum bird material ingestion into the engine core.

(ii) Ingestion of a flocking bird into the engine core under the conditions prescribed in paragraph (e)(1)(i) of this section must not cause any of the following:

(A) Sustained power or thrust reduction to less than 50 percent maximum rated takeoff power or thrust during the run-on segment specified under paragraph (e)(1)(iii)(B) of this section, that cannot be restored only by movement of the power lever.

(B) Sustained power or thrust reduction to less than flight idle power or thrust during the run-on segment specified under paragraph (e)(1)(iii)(B) of this section.

(C) Engine shutdown during the required run-on demonstration specified in paragraph (e)(1)(iii) of this section.

(D) Any condition specified in § 33.75(g)(2).

(iii) The following test schedule must be used (power lever movement between conditions must occur within 10 seconds or less, unless otherwise noted):

Note 1 to paragraph (e)(1)(iii) introductory text. Durations specified are times at the defined conditions in paragraphs (e)(1)(iii)(A) through (I) of this section.

(A) Ingestion.

(B) Followed by 1 minute without power lever movement.

(C) Followed by power lever movement to increase power or thrust to not less than 50 percent maximum rated takeoff power or thrust, if the initial bird ingestion resulted in a reduction in power or thrust below that level.

(D) Followed by 13 minutes at not less than 50 percent maximum rated takeoff power or thrust. Power lever movement in this condition is unlimited.

(E) Followed by 2 minutes at 30–35 percent maximum rated takeoff power or thrust.

(F) Followed by 1 minute with power or thrust increased from that set in paragraph (e)(1)(iii)(E) of this section, by 5–10 percent maximum rated takeoff power or thrust.

(G) Followed by 2 minutes with power or thrust reduced from that set in paragraph (e)(1)(iii)(F) of this section, by 5–10 percent maximum rated takeoff power or thrust.

(H) Followed by 1 minute minimum at ground idle.

(I) Followed by engine shutdown.

(2) *Approach flocking bird test.* (i) Test requirements are as follows:

(A) Before ingestion, the engine must be stabilized at the mechanical rotor speed of the first exposed stage or stages that produce approach idle thrust when descending through 3,000 feet MSL at standard day conditions.

(B) The approach flocking bird test shall be conducted using one bird of the highest weight specified in table 2 to this section for the engine inlet area.

(C) Ingestion must be at 209-knots true airspeed.

(D) The bird must be aimed at the first exposed rotating stage or stages, at the blade airfoil height measured at the leading edge that will result in maximum bird material ingestion into the engine core.

(ii) Ingestion of a flocking bird into the engine core under the conditions prescribed in paragraph (e)(2)(i) of this section may not cause any of the following:

(A) Power or thrust reduction to less than flight idle power or thrust during the run-on segment specified under paragraph (e)(2)(iii)(B) of this section.

(B) Engine shutdown during the required run-on demonstration specified in paragraph (e)(2)(iii) of this section.

(C) Any condition specified in § 33.75(g)(2).

(iii) The following test schedule must be used (power lever movement between conditions must occur within 10 seconds or less, unless otherwise noted):

Note 2 to paragraph (e)(2)(iii) introductory text. Durations specified are times at the defined conditions in paragraphs (e)(2)(iii)(A) through (H) of this section.

(A) Ingestion.

(B) Followed by 1 minute without power lever movement.

(C) Followed by 2 minutes at 30–35 percent maximum rated takeoff power or thrust. Power lever movement in this condition is unlimited.

(D) Followed by 1 minute with power or thrust increased from that set in paragraph (e)(2)(iii)(C) of this section, by 5–10 percent maximum rated takeoff power or thrust.

(E) Followed by 2 minutes with power or thrust reduced from that set in paragraph (e)(2)(iii)(D) of this section, by 5–10 percent maximum rated takeoff power or thrust.

(F) Followed by 1 minute minimum at ground idle.

(G) Followed by engine shutdown.

(H) Power lever movement between each condition must be 10 seconds or less, except that any power lever movements are allowed within the time

period of paragraph (e)(2)(iii)(C) of this section.

(3) *Results of exceeding engine-operating limits.* Applicants must show that an unsafe condition will not result if any engine-operating limit is exceeded during the run-on period.

(4) *Combining tests.* The climb flocking bird test of paragraph (e)(1) of this section may be combined with the medium flocking bird test of paragraph (c) of this section, if the climb first stage rotor speed calculated in paragraph (e)(1) of this section is within 3 percent of the first stage rotor speed required by paragraph (c)(1) of this section. As used in this paragraph (e)(4), “combined” means that, instead of separately conducting the tests specified in paragraphs (c) and (e)(1) of this section, the test conducted under paragraph (c) of this section satisfies the requirements of paragraph (e) of this section if the bird aimed at the core of the engine meets the bird ingestion speed criteria of paragraph (e)(1)(i)(C) of this section.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44704 in Washington, DC, on or about March 23, 2023.

Billy Nolen,

Acting Administrator.

[FR Doc. 2023–06413 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0655; Project Identifier MCAI–2022–01435–T; Amendment 39–22399; AD 2023–06–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by the determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the automatic flight control system

(AFCS) and fly-by-wire (FBW) systems and resulting in increased flightcrew workload during takeoff, approach, and landing below 400 feet above ground level (AGL). This AD requires revising the existing airplane flight manual (AFM) with new limitations to mitigate identified hazards due to 5G C-Band interference as identified by Notices to Air Missions (NOTAMs). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 19, 2023.

The FAA must receive comments on this AD by May 19, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0655; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT:

William Reisenauer, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–0655; Project Identifier MCAI–2022–01435–T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing

date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to William Reisenauer, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021) (AD 2021–23–12), to address the effect of interference from wireless broadband operations in the 3.7–3.98 GHz frequency band (5G C-Band) on all transport and commuter category airplanes equipped with a radio (also known as radar) altimeter. AD 2021–23–12 was prompted by a determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. AD 2021–23–12 requires revising the limitations section of the existing AFM to incorporate limitations prohibiting certain operations, which require radio altimeter data to land in low visibility conditions, when in the presence of 5G C-Band interference as identified by

NOTAMs. Transport Canada, which is the aviation authority for Canada, issued corresponding AD CF–2021–52, dated December 24, 2021, to prohibit certain flight operations requiring radio altimeter data in U.S. airspace affected by 5G C-Band wireless signals.

Since Transport Canada issued AD CF–2021–52, Transport Canada evaluated whether additional 5G-related hazards exist in certain Bombardier model airplanes. Bombardier has determined that 5G C-Band interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the AFCS and FBW systems as follows:

- Erroneous radio altimeter information has the potential to cause incorrect gains on approach, flight guidance oscillation, and crew over-correction. The flight director uses the glideslope to linearize the angular deviation and if the radio altimeter erroneously changes to an incorrect value, the resulting pitch command may be inadequate, resulting in flight path oscillations.

- Misleading radio altimeter information can adversely impact the autothrottle function, resulting in early or late activation of the retard mode, leading to an inappropriate level of thrust. This may result in a low energy state or longer landing distance. This malfunction will increase pilot workload as the crew disconnects the autothrottle and overrides the throttle levers.

- In the event of a weight-on-wheels (WOW) signal failure in combination with a related Master Minimum Equipment List (M MEL) dispatch, interference may result in the radio altimeter deploying the two pairs of ground spoilers at heights above 7 feet AGL.

- In the event of a WOW signal failure in combination with certain related M MEL dispatch associated with Section 2 Crew Alerting System (CAS) message relief, a takeoff rotation delay is significant and could compromise safe flight and landing.

These effects may lead to increased flightcrew workload and adversely affect the safe operation of the airplane during takeoff, approach, and landing below 400 feet AGL. Accordingly, Transport Canada determined that additional actions are necessary to address the unsafe condition and issued

AD CF–2022–61, dated November 4, 2022 (Transport Canada AD CF–2022–61) (also referred to after this as “the MCAI”), on all Bombardier, Inc., Model BD–700–2A12 airplanes. Transport Canada AD CF–2022–61 prohibits dispatch or release under certain M MEL items under Section 1, Line Replaceable Unit (LRU) Component Relief, and Section 2, Crew Alerting System (CAS) Message Relief. Transport Canada AD CF–2022–61 also requires revising the AFM with new limitations to prohibit autopilot and autothrottle operation below 400 feet AGL when in the presence of 5G C-Band interference as identified by NOTAMs.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0655.

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

AD Requirements

This AD requires revising the existing AFM with new limitations to prohibit dispatch under specified M MEL items under Section 1, Line Replaceable Unit (LRU) Component Relief, and Section 2, Crew Alerting System (CAS) Message Relief and to prohibit autopilot and autothrottle operation below 400 feet AGL when in the presence of 5G C-Band interference as identified by NOTAMs.

Interim Action

The FAA considers this AD an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable,

unnecessary, or contrary to the public interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband operations in the 5G C-Band. Further, this interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the AFCS, which could lead to increased flightcrew workload and adversely affect the safe operation of the airplane during takeoff, approach, and landing. The required actions to address the unsafe condition must be accomplished within 30 days, which is shorter than the time necessary to allow for public comment and for the FAA to publish a final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR AFM REVISIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × \$85 per hour = \$170	\$0	\$170	\$8,840

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023-06-13 Bombardier, Inc.: Amendment 39-22399; Docket No. FAA-2023-0655; Project Identifier MCAI-2022-01435-T.

(a) Effective Date

This airworthiness directive (AD) is effective April 19, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD-700-2A12 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by the determination that radio altimeters cannot be relied upon to perform their intended function if they experience interference from wireless broadband emissions in the 3.7–3.98 GHz frequency band (5G C-Band), and a recent determination that this interference can result in unavailable or misleading radio altimeter information, adversely affecting the performance of the automatic flight control system (AFCS) and fly-by-wire systems and resulting in increased flightcrew workload during takeoff, approach, and landing below 400 feet above ground level. The FAA is issuing this AD to address the resulting effects on the performance of the AFCS. The unsafe condition, if not addressed, could result in increased flightcrew workload and adversely affect the safe operation of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Revision of Existing Airplane Flight Manual (AFM): Master Minimum Equipment List (MMEL) Restrictions

Within 30 days after the effective date of this AD, revise Chapter 2—Limitations, Section 8 Systems, C. Automatic Flight Control System, of the existing AFM to include the information specified in figure 1 to paragraph (g) of this AD.

Figure 1 to paragraph (g)—MMEL Restrictions

BILLING CODE 4910-13-P

Radio Altimeter 5G C-Band Interference, MMEL Restrictions

Dispatch or release is prohibited under the following MMEL Sections into or out of airports in U.S. airspace in the presence of 5G C-Band wireless broadband interference as identified by NOTAMs. (NOTAMs will be issued to state the specific airports where the radio altimeter is unreliable due to the presence of 5G C-Band wireless broadband interference.)

- a. Section 1 Line Replaceable Unit (LRU) Component Relief:
 - i. 32-43-33 – MAIN WHEEL AXLE-INTERFACE-MODULE/WHEEL SPEED TRANSDUCER 1) WHEEL SPEED TRANSDUCER
 - ii. 32-61-09 – MAIN LANDING GEAR WEIGHT ON WHEELS PROXIMITY SWITCHES
 - iii. 34-44-00 – RADIO ALTIMETER SYSTEM
- b. Section 2 Crew Alerting System (CAS) Message Relief:
 - i. 27-0645 – 27 FLT CTRL – PFCC BCU INPUT REDUND LOSS
 - ii. 27-0660 – 27 FLT CTRL – PFCC LGSCU INPUT REDUND LOSS
 - iii. 27-0665 – 27 FLT CTRL – PFCC RAD ALT INPUT REDUND LOSS
 - iv. 32-0048 – 32 GEAR – GEAR WOW / WOFFW REDUND LOSS
 - v. 32-1005 – ANTISKID DEGRADED (CAUTION)
 - vi. 34-1200 – RAD ALT 1 FAIL (Advisory)

(h) Revision of Existing AFM: AFCS

For airplane serial numbers 70001 through 70110 inclusive and 70112: Within 30 days after the effective date of this AD, revise Chapter 2—Limitations, Section 8 Systems,

C. Automatic Flight Control System, of the existing AFM to include the information specified in figure 2 to paragraph (h) of this AD. Using a document with language identical to that of figure 2 to paragraph (h)

of this AD is acceptable for compliance with the requirements of this paragraph.

Figure 2 to paragraph (h): AFM Limitations revision

When operating in U.S. airspace, the following operations are prohibited in the presence of 5G C-Band wireless broadband interference as identified by NOTAM, unless using an approved Alternate Means of Compliance (AMOC):

- Autopilot operation below 400 feet AGL.
- Autothrottle operation on approach below 400 feet AGL.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: 9-avs-nyaco-cos@faa.gov. If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Previous AMOCs*: AMOCs approved for AD 2021–23–12, Amendment 39–21810 (86 FR 69984, December 9, 2021), providing relief for specific radio altimeter installations are approved as AMOCs for the provisions of this AD.

(3) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Bombardier, Inc.'s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–61, dated November 4, 2022, for related

information. This Transport Canada AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0655.

(2) For more information about this AD, contact William Reisenauer, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email 9-avs-nyaco-cos@faa.gov.

(k) Material Incorporated by Reference

None.

Issued on March 23, 2023.

Christina Underwood,
Acting Director, Compliance & Airworthiness
Division, Aircraft Certification Service.

[FR Doc. 2023–07078 Filed 3–31–23; 4:15 pm]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2023–0658; Project Identifier MCAI–2023–00315–T; Amendment 39–22402; AD 2023–07–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by several unscheduled PW1500G engine removals due to certain crew alerting system (CAS) messages being displayed, high vibration, or debris found on the magnetic chip collector of a bearing compartment. This AD prohibits dispatch of an airplane with an affected engine having an applicable CAS message displayed, unless the bearing compartment chip collector and oil filter are inspected and any debris found is dispositioned, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 19, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of April 19, 2023.

The FAA must receive comments on this AD by May 19, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0658; or in person at Docket Operations between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca*; website *tc.canada.ca/en/aviation*.

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0658.

FOR FURTHER INFORMATION CONTACT:

Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include “Docket No. FAA–2023–0658; Project Identifier MCAI–2023–00315–T” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt

from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada Emergency AD CF–2023–12, dated February 23, 2023 (Transport Canada Emergency AD CF–2023–12) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes.

The MCAI states that since early 2021, there have been several unscheduled PW1500G engine removals due to CAS message L/R ENGINE FAULT with associated INFO message OIL DEBRIS ABOVE LIMIT being displayed, high vibration, or debris found on the magnetic chip collector of bearing compartment No. 3 (BC3). The investigation by Pratt & Whitney found that in most instances, the No. 3 bearings originated from a single manufacturing lot that have a possible defect.

In December 2022, an airplane experienced engine stall and uncommanded in-flight shutdown (IFSD) while in cruise. Prior to the IFSD event, the airplane had received advisory-level CAS message R ENGINE FAULT with associated INFO message 79 R ENGINE FAULT–OIL DEBRIS ABOVE LIMIT during the previous flight, and the fault was deferred in accordance with the approved minimum equipment list (MEL). The No. 3 bearing installed on the event engine was found to be from the suspect lot, and post-event inspection found metallic debris on the BC3 chip collector.

This AD is intended to prevent a No. 3 bearing failure. This condition, if not addressed, could result in unrecoverable engine failure or power loss for both engines and consequent reduced control of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–0658.

Related Service Information Under 1 CFR Part 51

Transport Canada Emergency AD CF–2023–12 prohibits dispatch of an airplane with an affected engine having an applicable CAS message displayed, unless the BC3 chip collector and oil filter are inspected and any debris found is dispositioned. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in Transport Canada Emergency AD CF–2023–12 described previously, except for any differences

identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, Transport Canada Emergency AD CF–2023–12 is incorporated by reference in this AD. This AD requires compliance with Transport Canada Emergency AD CF–2023–12 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in Transport Canada Emergency AD CF–2023–12 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the sections titled “Compliance” and “Corrective Actions” in Transport Canada Emergency AD CF–2023–12.

FAA’s Justification and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for “good cause,” finds that those procedures are “impracticable, unnecessary, or contrary to the public

interest.” Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because a No. 3 bearing failure could result in unrecoverable engine failure or power loss for both engines and consequent reduced control of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 84 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × \$85 per hour = \$85	\$0	\$85	\$7,140

The FAA estimates it would take 2 hours for any required inspection and debris disposition at \$85 per hour, for a total cost of \$170 per engine.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency’s authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or

develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a “significant regulatory action” under Executive Order 12866, and

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2023–07–01 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22402; Docket No. FAA–2023–0658; Project Identifier MCAI–2023–00315–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 19, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type Certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada Emergency AD CF–2023–12, dated February 23, 2023 (Transport Canada Emergency AD CF–2023–12).

(d) Subject

Air Transport Association (ATA) of America Code 72, Turbine/turboprop engine.

(e) Unsafe Condition

This AD was prompted by several unscheduled PW1500G engine removals due to crew alerting system (CAS) message L/R ENGINE FAULT with associated INFO message OIL DEBRIS ABOVE LIMIT being displayed, high vibration, or debris found on the magnetic chip collector of bearing compartment No. 3 (BC3). The FAA is issuing this AD to prevent a No. 3 bearing failure. The unsafe condition, if not addressed, could result in unrecoverable engine failure or power loss for both engines

and consequent reduced control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada Emergency AD CF–2023–12.

(h) Exception to Transport Canada Emergency AD CF–2023–12

Where Transport Canada Emergency AD CF–2023–12 refers to its effective date, this AD requires using the effective date of this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada; or Airbus Canada Limited Partnership’s Transport Canada Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Additional Information

For more information about this AD, contact Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email 9-avs-nyacos@faa.gov.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Transport Canada Emergency AD CF–2023–12, dated February 23, 2023.

(ii) [Reserved]

(3) For Transport Canada Emergency AD CF–2023–12, contact Transport Canada,

Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email AD-CN@tc.gc.ca; website tc.canada.ca/en/aviation.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). 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.

Issued on March 28, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–06989 Filed 3–30–23; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1454; Airspace Docket No. 21–AWP–56]

RIN 2120–AA66

Amendment of Class E Airspace; Boswell Airport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace extending upward from 700 feet above the surface at Boswell Airport, CA. It reduces the radius, establishes an extension to the north, modifies the extension to the south, and it makes several administrative modifications to update the airport’s legal description. These actions will support the safety and management of instrument flight rule (IFR) operations at the airport.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at www.regulations.gov using the FAA Docket number. Electronic retrieval help and guidelines are

available on the website. It is available 24 hours each day, 365 days each year.

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

FOR FURTHER INFORMATION CONTACT: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-2428.

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 modifies the Class E airspace at Boswell Airport, CA, to support IFR operations at the airport.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2022-1454 in the **Federal Register** (87 FR 76592; December 15, 2022), modifying Class E airspace extending upward from 700 feet above the surface at Boswell Airport, CA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E5 airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. These

amendments will be published in the next update to FAA Order JO 7400.11.

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 modifying the Class E airspace extending upward from 700 feet above the surface at Boswell Airport, CA. The 6.6-mile radius airspace area encircling the airport is reduced to a 2.4-mile radius, as circling maneuvers are not authorized at the airport. The southeast extension of the airport is widened, shortened, and re-aligned to be within 2.1 miles either side of the 148° bearing from the airport, extending from the 2.4-mile radius to 6.7 miles southeast of the airport to better contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface. Additionally, a northern extension was added to the airspace description, which is 2.4 miles either side of the 346° bearing from the airport, extending from the 2.4-mile radius to 7.6 miles north of the airport to better contain arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface.

Finally, this action makes several administrative modifications to the airport's legal description. The airport name in line one of the text header is corrected from "Salzer Farms" to read "Corcoran, CA." The airport name in line two of the text header is corrected from "Salzer Farms Airport" to "Boswell Airport." Moreover, reference to the Salzer Farms nondirectional beacon has been removed from line 4 of the text header, as it is not needed to describe the airspace. The geographic coordinates for the airport are updated to match the FAA's database.

Regulatory Notices and Analyses

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

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP CA E5 Corcoran, CA [Amended]

Boswell Airport, CA
(Lat. 36°05'19" N, long. 119°32'30" W)

That airspace extending upward from 700 feet above the surface within a 2.4-mile radius of the airport, and within 2.1 miles each side of the 148° bearing from the airport extending from the 2.4-mile radius to 6.7 miles southeast of the airport, and within 2.4 miles each side of the 346° bearing from the airport extending from the 2.4-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Des Moines, Washington, on March 28, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023-06890 Filed 4-3-23; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2022–0759; **Airspace**
Docket No. 22–ASW–14]

RIN 2120–AA66

**Establishment of Class E Airspace;
Vinita, OK**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Vinita, OK. This action supports the establishment of public instrument procedures at Vinita Municipal Airport, Vinita, OK.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with

prescribing regulations to assign the use of 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 establishes Class E airspace extending upward from 700 feet above the surface at Vinita Municipal Airport, Vinita, OK, to support instrument flight rule operations at this airport.

History

The FAA published a NPRM for Docket No. FAA 2022–0759 in the **Federal Register** (87 FR 35691; June 13, 2022), establishing Class E airspace at Vinita, OK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, **Airspace Designations and Reporting Points**, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. These amendments will be published in the next update to FAA Order JO 7400.11.

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 establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Vinita Municipal Airport, Vinita, OK.

This action supports the establishment of public instrument procedures at Vinita Municipal Airport.

Regulatory Notices and Analyses

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

certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, **Airspace Designations and Reporting Points**, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW OK E5 Vinita, OK [Establish]

Vinita Municipal Airport, OK
(Lat. 36°36'53" N, long. 95°09'06" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Vinita Municipal Airport.

Issued in Fort Worth, Texas, on March 29, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–06808 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2023–0442; **Airspace**
Docket No. 23–AWA–1]

RIN 2120–AA66

**Amendment of Class C Airspace;
Greenville-Spartanburg Airport, Greer,
SC**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Greenville-Spartanburg Airport, Greer, SC Class C airspace description to update the Greenville-Spartanburg Airport name, and the geographic coordinates of the airport reference point (ARP) to match the FAA's National Airspace System Resources (NASR) database information. Additionally, this action amends the airspace description by updating the header format and replacing the outdated terms "Notice to Airmen" and "Airport/Facility Directory" with the current terminology. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, June 15, 2023. 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 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, 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 updates the information in the Greer, SC Class C airspace description.

History

During a review of the Greer, SC Class C airspace description, the FAA identified the need to update the name and ARP geographic coordinates for the Greenville-Spartanburg Airport, replace the outdated terms "Notice to Airmen" and "Airport/Facility Directory," and update the title of "Greer Tower."

Incorporation by Reference

Class C airspace areas are published in paragraph 4000 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. These amendments will be published in the next update to FAA Order JO 7400.11.

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 updating the Greer, SC Class C airspace description as published in FAA Order JO 7400.11G, Airspace Designations and Reporting Points. The name "Greenville-Spartanburg Airport" is changed to "Greenville-Spartanburg International Airport," to match the Airport Master Record database, and the ARP geographic coordinates are updated from "lat. 34°53'56" N, long. 82°12'49" W" to "lat. 34°53'44" N, long. 82°13'08" W." The ARP coordinates update is made to match the FAA's NASR database information. The airport name is removed from the first line in the text header of the description leaving just the city location of the airport. The city

name is removed from the second line of the header leaving just the airport name on that line. These changes follow the current formatting standard. In the body of the Class C description, the outdated term "Notice to Airman" is replaced by "Notice to Air Missions." The outdated term "Airport/Facility Directory" is replaced by "Chart Supplement." The term "Greer Tower" is replaced by "Greer Airport Traffic Control Tower."

This action consists of administrative changes only and does not affect the boundaries, altitudes, or operating requirements of the airspace. Therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of making administrative edits to the Greenville-Spartanburg International Airport Class C airspace description qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA

has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, effective September 15, 2022, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

ASO SC C Greer, SC [Amended]

Greenville-Spartanburg International Airport, SC

(Lat. 34°53'44" N, long. 82°13'08" W)

That airspace extending upward from the surface to and including 5,000 feet MSL within a 5-mile radius of the Greenville-Spartanburg International Airport; and that airspace extending upward from 2,200 feet MSL to 5,000 feet MSL within a 10-mile radius of the airport from the 024° bearing from the airport clockwise to the 223° bearing from the airport; and that airspace extending upward from 3,100 feet MSL to 5,000 feet MSL within a 10-mile radius of the airport from the 223° bearing from the airport clockwise to the 024° bearing from the airport. This Class C airspace area is effective during the specific days and times of operation of the Greer Airport Traffic Control Tower and Approach Control Facility as established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

Issued in Washington, DC, on March 29, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–06896 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1443; Airspace Docket No. 22–ASW–24]

RIN 2120–AA66

Establishment of Class E Airspace; Smithville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Smithville, TX. This action supports the establishment of new public instrument procedures.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 establishes Class E airspace extending upward from 700 feet above the surface at Smithville Crawford Municipal Airport, Smithville, TX, to support instrument flight rule operations at this airport.

History

The FAA published an NPRM for Docket No. FAA 2022–1443 in the **Federal Register** (87 FR 74055; December 2, 2022), establishing Class E airspace at Smithville, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. These amendments will be published in the next update to FAA Order JO 7400.11.

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 establishing Class E airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Smithville Crawford Municipal Airport, Smithville, TX.

This action supports the establishment of public instrument procedures at Smithville Crawford Municipal Airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a

“significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

ASW TX E5 Smithville, TX [Establish]

Smithville Crawford Municipal Airport, TX (Lat. 30°01'42" N, long. 97°10'01" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Smithville Crawford Municipal Airport.

Issued in Fort Worth, Texas, on March 29, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–06807 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1440; Airspace
Docket No. 21–AWP–44]

RIN 2120–AA66

Establishment of Class E Airspace; New Coalinga Municipal Airport, CA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at New Coalinga Municipal Airport, Coalinga, CA. The establishment of Class E airspace at Coalinga supports the airport’s transition from visual flight rule (VFR) to instrument flight rule (IFR) operations.

DATES: Effective 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT:

Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for FAA–2022–1440 (87 FR 76429; December 14, 2022) to establish Class E airspace extending upward from 700 feet above the surface at New Coalinga Municipal Airport, Coalinga, CA. This action was to support the airport’s transition from VFR to IFR operations. Interested parties were invited to participate in this rulemaking effort by submitting written comments to the FAA on the proposal. No comments were received.

Incorporation by Reference

Class E5 airspace is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends FAA Order JO 7400.11G, 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. These amendments will be published in the next update to FAA Order JO 7400.11.

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 establishing Class E airspace at New Coalinga Municipal Airport, Coalinga, CA, extending upward from 700 feet above the surface within a 3.7-mile radius of the airport. In addition, Class E airspace extending upward from 700 feet above the surface is established within an area 1.9 miles each side of the 134° bearing from the airport, extending from the 3.7-mile radius to 9.4 miles

southeast from the airport, and within 3.4 miles each side of the 346° bearing from the airport, extending from the 3.7-mile radius to 7.7 miles northwest of the airport. This airspace is designed to accommodate arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface, and will support the airport's transition from VFR to IFR operations.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes 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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP CA E5 Coalinga, CA [New]

New Coalinga Municipal Airport, CA
(Lat. 36°09'44" N, long. 120°17'41" W)

That airspace extending upward from 700 feet above the surface within a 3.7-mile radius of the airport, and within 1.9 miles each side of the 134° bearing from the airport extending from the 3.7-mile radius to 9.4 miles southeast of the airport, and within 3.4 miles each side of the 346° bearing from the airport, extending from the 3.7-mile radius to 7.7 miles northwest of the airport.

* * * * *

Issued in Des Moines, Washington, on March 27, 2023.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2023–06889 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1117; Airspace
Docket No. 22–AGL–31]

RIN 2120–AA66

Establishment of Class E Airspace; Delphi, IN

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Delphi, IN. This action

supports the establishment of new public instrument procedures.

DATES: Effective date 0901 UTC, June 15, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 establishes Class E airspace extending upward from 700 feet above the surface at Delphi Municipal Airport, Delphi, IN, to support instrument flight rule operations at this airport.

History

The FAA published a NPRM for Docket No. FAA 2022–1117 in the **Federal Register** (87 FR 57158; September 19, 2022), establishing Class E airspace at Delphi, IN. Interested parties were invited to participate in this rulemaking effort by submitting

written comments on the proposal to the FAA. Three (3) comments were received. Two (2) supporting the proposed action, and one (1) not applicable to the proposed action. No responses are provided.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, 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. These amendments will be published in the next update to FAA Order JO 7400.11.

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 establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Delphi Municipal Airport, Delphi, IN.

This action supports the establishment of public instrument procedures at Delphi Municipal Airport.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.5.a. This airspace action is not expected to cause any potentially

significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AGL IN E5 Delphi, IN [Establish]

Delphi Municipal Airport, IN
(Lat. 40°32′27″ N, long. 86°40′53″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Delphi Municipal Airport.

Issued in Fort Worth, Texas, on March 29, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–06809 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 230322–0082]

RIN 0648–AV85

National Marine Sanctuary Regulations; Corrections and Correcting Amendments

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; correction.

SUMMARY: NOAA published a final rule that appeared in the **Federal Register** on January 6, 2023, announcing revisions to the National Marine Sanctuaries program regulations. This document makes several non-substantive, technical corrections to inadvertent errors that appeared in the final rule.

DATES: This correction and correcting amendments are effective on April 7, 2023.

ADDRESSES: The final rule is accessible via the internet at the Office of the Federal Register website at <https://www.federalregister.gov>.

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533–0650, Vicki.Wedell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the final rule which appeared in the January 6, 2023 **Federal Register** (88 FR 953), there were various inadvertent, technical, and typographical errors in the amendatory instructions. On February 3, 2023, at 88 FR 7357, the effective date was delayed in order to provide NOAA time to prepare technical corrections to the final rule. This document corrects those errors and applies those corrections as if they were included in the final rule that appeared in the January 6, 2023 **Federal Register** publication.

II. Summary of Technical Corrections to Final Rule

NOAA is publishing this correction to revise the regulatory instructions so that implementing regulations are not removed or otherwise altered in unintended ways that would create inaccuracies in the regulatory text and cause public confusion. This correction is effective on April 7, 2023, the date on which the final rule is effective.

Here is a summary of the corrections and correcting amendments NOAA is making.

On page 959, in the second column, § 922.5 is corrected so that it tracks without change, except for renumbering, existing regulatory text published at § 922.42 “Allowed activities”, as shown in the “Correction” section.

On page 965, in the third column, corrects amendatory instruction 14 to remove “Cruise ship” from § 922.81 to ensure consistent interpretation of like terms throughout the System.

On page 965, at the end of the third column, amendatory instruction 15 included an unnecessary and confusing internal cross reference in § 922.82(c) to

subpart D, which sets forth procedures and criteria for issuance of National Marine Sanctuary (NMS) permits. Section 922.82(c) provides an exception to the prohibitions set forth in § 922.82(a) for activities necessary to respond to an emergency threatening life, property or the environment, whereas § 922.82(d) provides a separate, independent exception for activities executed in accordance with a permit issued in accordance with subpart D. Therefore, the internal cross-reference in § 922.82(c) is superfluous, and amendatory instruction 15 is corrected to remove the cross-reference in § 922.82(c) to subpart D and as shown in the “Correction” section.

This correction notice includes a new instruction that revises paragraphs § 922.84(a) and (j) that were inadvertently omitted from the January 6, 2023 final rule. These paragraphs govern the issuance of certifications in Greater Farallones NMS. For purposes of consistency and clarity, the date of sanctuary expansion is added to § 922.84(a), the internal cross-reference in § 922.84(a) to § 922.47, governing certifications, is updated and changed to § 922.10, and the internal cross-reference in § 922.84(j) to § 922.50, governing appeals, is updated and changed to § 922.37 in the regulatory text.

On page 966, in the second column, amendatory instruction 19 revises paragraph § 922.92(c) to include a reference to special use permits issued pursuant to subpart D that was inadvertently omitted from the final rule, and is included in the “Correction” section.

On page 966, in the third column, amendatory instruction 23 did not include a reference to special use permits issued pursuant to subpart D. Therefore, amendatory instruction 23 is corrected as shown in the “Correction” section.

On page 967, in the first column, amendatory instruction 27 included an unnecessary and confusing internal cross reference in § 922.112(d) to subpart D, which sets forth procedures and criteria for issuance of NMS permits. Section 922.112(d) provides an exception to the prohibitions set forth in § 922.112(b) for activities necessary to respond to an emergency threatening life, property or the environment, whereas § 922.112(d) provides a separate, independent exception for activities executed in accordance with a permit issued in accordance with subpart D. Therefore, the internal cross-reference in § 922.112(d) is superfluous, and amendatory instruction 27 is corrected to remove the cross-reference

in § 922.112(d) to subpart D, as shown in the “Correction” section.

On page 967, in the first column, amendatory instruction 28 is corrected by updating the address provided at § 922.113(b), as shown in the “Correction” section below. A corresponding change to the “ATTN” line is made at § 922.83(b). On page 966, in the first column, amendatory instruction 16 is updated to correspond to reflect that there is now one Superintendent and one mailing address for both Greater Farallones National Marine Sanctuary and Cordell Bank National Marine Sanctuary.

On page 967, in the second column, amendatory instruction 30 inadvertently updated § 922.122(a)(7) by referencing an incorrect paragraph. NOAA meant to revise paragraph (a)(8), not paragraph (a)(7). Additionally, the instructions to § 922.122(f) inadvertently changed the applicable subparagraphs from (a)(2) through (11) to (a)(2) through (10), which is being restored to the original text, as shown in the “Correction” section below. Moreover, a new instruction is included in the regulatory text below for § 922.122(g), which will replace the reference § 922.49 with § 922.36 at subpart D.

On page 967, in the second column, amendatory instruction 31 updated paragraph § 922.123(a) by inadvertently changing the applicable subparagraphs from (a)(2) through (10) whereas the original text included the applicable subparagraphs from (a)(2) through (11). Amendatory instruction 31 is corrected as shown in the “Correction” section.

On page 967, in the third column, amendatory instruction 32 directed the Office of the Federal Register to revise the introductory text, paragraph (a), and the first sentence of paragraph (b) in 15 CFR 922.130. Regarding the revision of § 922.130(a), only the first sentence of § 922.130(a) was intended to be updated, and the remaining sentences in the paragraph were to remain unchanged. However, the instruction revised the first sentence and inadvertently deleted the rest of paragraph (a). The instruction should have revised the first sentence of paragraph (a) and then indicated that the remaining sentences in the paragraph were to remain unchanged. In order to retain the rest of paragraph (a) as described above, NOAA corrects the amendatory instruction as shown in the “Correction” section.

On pages 967–968, amendatory instruction 34 directed the Office of the Federal Register to revise paragraph (c)(1) and (d) through (f) in 15 CFR 922.132.

In paragraph (c)(1), NOAA inadvertently changed the applicable subparagraphs from (a)(2) through (12), which is restored through the regulatory text below. In addition, in a rulemaking on November 15, 2021 (86 FR 62901), NOAA updated the reference for applicable activities subject to this exemption for the purposes of Davidson Seamount Management Zone to be the 2021 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review. NOAA retains that reference in this correction.

In paragraph (e), NOAA’s intent was only to update references for authorizations from § 922.49 to § 922.36 of the new subpart D of part 922. NOAA inadvertently omitted existing text that referenced non-invasive introduced species of shellfish, as determined by NOAA and the State of California. The correct applicable subparagraphs and clarifying text is restored as shown in the “Correction” section below.

In paragraph (f), NOAA’s intent was only to update references for certifications from § 922.47 to § 922.10 of the new subpart D of part 922. However, the instruction inadvertently omitted the existing text that referenced the disposal of dredged material that does not include the beneficial use of dredged material as defined by the site regulations. In order to retain the existing regulatory text, NOAA corrects the amendatory instruction as shown in the “Correction” section.

This correction includes a new instruction that revises paragraphs §§ 922.134(a)(2) and (b)(2) to conform to the consolidation to subpart D made in the January 6, 2023 final rule. This section pertains to review of certain State permits and leases. This correction adds a cross reference to the new section § 922.36 in consolidated subpart D and is corrected in the regulatory instructions.

On page 968, in the third column, amendatory instruction 38 for § 922.142(f) regarding the limitations on the issuance of permits for Stellwagen Bank NMS, is corrected by replacing the reference to the statute with reference to the issuance of special use permits pursuant to the new subpart D, as shown in the “Correction” section.

On page 969, in the first column, amendatory instruction 42 inadvertently updated § 922.152(a)(5) regarding the Olympic Coast NMS prohibition on drilling by changing “submerged lands” to “seabed”. As such, the instruction to revise § 922.152(a)(5) is removed. This correction also updates § 922.152(h) regarding the limitations on the issuance of permits for Olympic Coast

NMS by replacing the reference to the statute with reference to the issuance of special use permits pursuant to the new subpart D, as shown in the “Correction” section.

On page 970, in the first column, amendatory instruction 47 updates § 922.162 of site-specific definitions for Florida Keys NMS, but inadvertently did not remove the terms “Seagrass” and “Vessel” as those terms have been moved to the program regulations at § 922.11. The instruction is corrected as shown in the “Correction” section.

On pages 972–973, amendatory instructions 53 and 56 are revised. The boundary description for Thunder Bay NMS is set forth in 15 CFR 922.190, and the boundary coordinates for the Thunder Bay NMS is set forth in Appendix A of 15 CFR 922, subpart R. This sanctuary was expanded in 2014 (79 FR 52960; September 5, 2014). The amendatory instructions to revise the boundary description in 15 CFR 922.190 and the table of boundary coordinates were inadvertently included in the final rule, when only the first sentence of the boundary description was only to be updated to read “3,247 square nautical miles (nmi²) (4,300 sq. mi.).” NOAA is correcting the language in 15 CFR 922.190 in instruction 53 to accurately reflect this intended update, and removing instruction 56 to retain the existing regulatory descriptions at Appendix A of 15 CFR 922, subpart R, as shown in the “Correction” section.

This correction includes a new amendatory instruction 53a that revises paragraph § 922.193(d) referring to the applicability of the site-specific prohibitions to permits and to certifications issued for authorizations in existence on the effective date of the Thunder Bay NMS regulations. Subparagraph (d)(1) is revised to reference special use permits issued pursuant to the new subpart D, as shown in the regulatory section below. Also, subparagraph (d)(2) is removed and reserved since § 922.194 is no longer applicable and was removed and reserved.

This correction includes a new instruction that revises §§ 922.201(b) and 922.211(b) to conform to the consolidation to subpart D made in the January 6, 2023 final rule. This correction adds cross references to the new section § 922.11 on definitions in the program regulations that was not updated in the Mallows Bay–Potomac River and Wisconsin Shipwreck Coast NMS’s site-specific regulations and appears in the regulatory section.

On page 973, in the second and third columns, respectively, amendatory instructions 57 and 59 correct

§§ 922.205(a) and 922.215(a) by removing the phrase “under this section” from each instruction in the regulatory text below since the permit procedures are not included in those sections, but rather are now consolidated in Subpart D, as shown in the “Correction” section.

7. On page 973, in the second and third columns, respectively, amendatory instructions 58 and 60 did not revise §§ 922.206(a) and 922.216(a) to conform to the consolidation to subpart D made in the January 6, 2023 final rule. This correction adds cross references to the new subpart D for permitting in the program regulations that was not updated in the Mallows Bay–Potomac River and Wisconsin Shipwreck Coast NMS’s site-specific regulations. In addition, the effective dates of each NMS designation are added through this correction. These changes are shown in the “Correction” section.

III. Correction

In FR Document 2022–28225 at 88 FR 953 in the issue of January 6, 2023 (delayed effective date at 88 FR 7357, February 3, 2023), on pages 959–973, the following corrections are made:

■ 1. On page 959, in the second column, in amendatory instruction 3, correct § 922.5 to read as follows:

§ 922.5 [Corrected]

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in the site-specific regulations covered by this part, subject to any emergency regulations promulgated under this part, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*). The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

■ 2. On page 965, in the third column, in part 922, correct amendatory instruction 14 and § 922.81 introductory text to read as follows:

14. In § 922.81:

- a. Revise the introductory text; and
- b. Remove the definitions of “Attract or attracting”, “Clean”, “Cruise ship”, “Deserting”, “Harmful matter”, “Introduced species”, and “Seagrass”.

The revision reads as follows:

§ 922.81 [Corrected]

In addition to those definitions found at § 922.11, the following definitions apply to this subpart:

* * * * *

■ 3. On page 965, in the third column, in amendatory instruction 15, correct paragraph (d) to read as follows:

§ 922.82 [Corrected]

* * * * *

(d) The prohibitions in paragraphs (a)(2) through (9) and (11) through (16) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued in accordance with subpart D of this part and § 922.83, or a special use permit issued pursuant to subpart D of this part.

■ 4. On page 966, in the first column, in amendatory instruction 16, correct paragraph (b) to read as follows:

§ 922.83 [Corrected]

* * * * *

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones and Cordell Bank National Marine Sanctuaries, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

■ 5. On page 966, in the second column, in amendatory instruction 19 correct paragraph (a) introductory text and paragraph (c) to read as follows:

§ 922.92 [Corrected]

(a) Except as may be necessary for national defense (subject to the terms and conditions of Article 5, Section 2 of the Designation Document) or to respond to an emergency threatening life, property, or the environment, or except as may be permitted by the Director in accordance with subpart D of this part and § 922.93 and 922.94, the following activities are unlawful for any person to conduct or to cause to be conducted within the Sanctuary:

* * * * *

(c) The prohibitions in this section and in § 922.94 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.93, or a special use permit issued pursuant to subpart D of this part.

* * * * *

■ 6. On page 966, in the third column, in amendatory instruction 23 correct paragraph (e) to read as follows:

§ 922.103 [Corrected]

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (15) of this section and §§ 922.104 and 922.105 do not apply to any activity conducted under and in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.107, or a special use permit issued pursuant to subpart D of this part.

■ 7. On page 967, in the first column, in amendatory instruction 27, correct paragraph (d) to read as follows:

§ 922.112 [Corrected]

* * * * *

(d) The prohibitions in paragraphs (a)(2) through (7) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.113, or a special use permit issued pursuant to subpart D of this part.

* * * * *

■ 8. On page 967, in amendatory instruction 28, correct § 922.113 to read as follows:

§ 922.113 [Corrected]

(a) A person may conduct an activity otherwise prohibited by § 922.112(a)(2) through (7) if the activity is specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Greater Farallones and Cordell Bank National Marine Sanctuaries, 991 Marine Dr., The Presidio, San Francisco, CA 94129.

■ 9. on page 967, in the second column, correct amendatory instruction 30 and the regulatory text to read as follows:

30. In § 922.122 revise paragraphs (a)(8), (f), (g), and (h) to read as follows:

§ 922.122 [Corrected]

(a) * * *

(8) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

* * * * *

(f) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity specifically

authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit or ONMS authorization issued pursuant to subpart D of this part and § 922.123 or a special use permit issued pursuant to subpart D of this part.

(g) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under subpart D of this part and § 922.123 authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone and issued after January 18, 1994 shall be invalid.

■ 10. On page 967, in the second column, in amendatory instruction 31, correct § 922.123 to read as follows:

§ 922.123 [Corrected]

(a) A person may conduct an activity otherwise prohibited by § 922.122(a)(2) through (11) if such activity is specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

■ 11. On page 967, in the third column, correct amendatory instruction 32 and the regulatory text to read as follows:

32. Amend § 922.130 by revising the introductory text, the first sentence of paragraph (a), and the first sentence of paragraph (b) to read as follows:

§ 922.130 [Corrected]

The Monterey Bay National Marine Sanctuary (Sanctuary) consists of two separate areas. The combined area of

both parts is approximately 4,601 square nautical miles (nmi²) (6,093 sq. mi.).

(a) The first area consists of an area of approximately 4,016 square nautical miles (nmi²) (5,318 sq. mi.) of coastal and ocean waters, and submerged lands thereunder, in and surrounding Monterey Bay off the central coast of California. * * *

* * * * *

(b) The Davidson Seamount Management Zone is also part of the Sanctuary. This area, bounded by geodetic lines connecting a rectangle centered on the top of the Davidson Seamount, consists of approximately 585 square nmi (nmi²) (774 sq. mi.) of ocean waters and the submerged lands thereunder. * * *

■ 12. On page 967, in the third column, in amendatory instruction 34, correct paragraphs (c)(1), (d), (e) and (f) to read as follows:

§ 922.132 [Corrected]

* * * * *

(c)(1) All Department of Defense activities must be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2) through (12) of this section do not apply to existing military activities carried out by the Department of Defense, as specifically identified in the Final Environmental Impact Statement and Management Plan for the Proposed Monterey Bay National Marine Sanctuary (NOAA, 1992). For purposes of the Davidson Seamount Management Zone, these activities are listed in the 2021 Final Environmental Assessment for Monterey Bay National Marine Sanctuary Management Plan Review. New activities may be exempted from the prohibitions in paragraphs (a)(2) through (12) of this section by the Director after consultation between the Director and the Department of Defense.

* * * * *

(d) The prohibitions in paragraph (a)(1) of this section as it pertains to jade collection in the Sanctuary, and paragraphs (a)(2) through (11) and (13) of this section, do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and § 922.133 or a special use permit issued pursuant to subpart D of this part.

(e) The prohibitions in paragraphs (a)(2) through (8), and (a)(12) of this section regarding any introduced species of shellfish that NOAA and the

State of California have determined is non-invasive and will not cause significant adverse effects to sanctuary resources or qualities, and that is cultivated in state waters as part of commercial shellfish aquaculture activities, do not apply to any activity authorized by any lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation (January 1, 1993) and issued by any Federal, State, or local authority of competent jurisdiction, provided that the applicant complies with § 922.36, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date of Sanctuary designation.

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part authorizing, or otherwise approve, the exploration for, development, or production of oil, gas, or minerals within the Sanctuary, except for the collection of jade pursuant to paragraph (a)(1) of this section; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.10, of valid authorizations in existence on January 1, 1993 and issued by other authorities of competent jurisdiction); or the disposal of dredged material within the Sanctuary other than at sites authorized by EPA (in consultation with COE) prior to January 1, 1993. For the purposes of this subpart, the disposal of dredged material does not include the beneficial use of dredged material as defined by § 922.131. Any purported authorizations issued by other authorities within the Sanctuary shall be invalid.

■ 13. On page 968, in the third column, in amendatory instruction 38, correct paragraphs (d) and (f) to read as follows:

§ 922.142 [Corrected]

* * * * *

(d) The prohibitions in paragraphs (a)(1) and (3) through (7) of this section do not apply to any activity specifically authorized by and conducted in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to subpart D of this part and

§ 922.143 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(f) Notwithstanding paragraphs (d) and (e) of this section, in no event may the Director issue a permit under subpart D of this part and § 922.143, or a special use permit issued under subpart D, authorizing, or otherwise approving, the exploration for, development or production of industrial materials within the Sanctuary, or the disposal of dredged materials within the Sanctuary (except by a certification, pursuant to § 922.10, of valid authorizations in existence on November 4, 1992) and any leases, licenses, permits, approvals or other authorizations authorizing the exploration for, development or production of industrial materials in the Sanctuary issued by other authorities after November 4, 1992, shall be invalid.

■ 14. On page 969, in the first and second columns, correct amendatory instruction 43 and the regulatory text to read:

43. Amend § 922.152 by revising paragraphs (e) and (h) to read as follows:

§ 922.152 Prohibited or otherwise regulated activities.

* * * * *

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity specifically authorized by and conducted under and in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit or an ONMS authorization issued pursuant to subpart D of this part and § 922.153 or a special use permit issued pursuant to subpart D of this part.

* * * * *

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit or ONMS authorization under subpart D of this part and § 922.153 or a special use permit under subpart D of this part authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary; the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

■ 15. On page 970, in the first column, correct amendatory instruction 47 and the regulatory text to read:

47. In § 922.162:

a. Revise paragraph (a) introductory text;

b. Remove the definition of “Fish,” “Seagrass,” and “Vessel” in paragraph (a); and

c. Revise paragraph (b).

The revisions read as follows:

§ 922.162 [Corrected]

(a) The following definitions apply to the Florida Keys National Marine Sanctuary regulations. To the extent that a term appears in § 922.11 and this section, the definition in this section governs.

* * * * *

(b) Other terms appearing in the regulations in this part are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 *et seq.* and 16 U.S.C. 1431 *et seq.*

■ 16. on page 972, in the first column, correct amendatory instruction 53 and the regulatory text to read as follows:

53. Amend § 922.190 by revising the first sentence of paragraph (a) to read as follows:

§ 922.190 [Corrected]

(a) Except as provided in paragraph (b) of this section, the Thunder Bay National Marine Sanctuary and Underwater Preserve (Sanctuary) consists of an area of approximately 3,247 square nautical miles (nmi²) (4,300 sq. mi.) of waters of Lake Huron and the submerged lands thereunder, over, around, and under the underwater cultural resources in Thunder Bay.

* * *

* * * * *

■ 17. On page 973, in the second column, remove amendatory instruction 56.

■ 18. On page 973, in the second column, correct amendatory instruction 57 and the regulatory text to read as follows:

57. Revise § 922.205 to read as follows:

§ 922.205 Permit procedures.

(a) A person may conduct an activity otherwise prohibited by § 922.203(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Mallows Bay-Potomac River National Marine

Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 19. on page 973, in the second column, in amendatory instruction 58 correct paragraphs (a) and (j) to read as follows:

§ 922.206 [Corrected]

(a) A person may conduct an activity prohibited by § 922.203(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the September 3, 2019 sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *

■ 20. On page 973, in the third column, correct amendatory instruction 59 and the regulatory text to read:

59. Revise § 922.215 to read as follows:

§ 922.215 [Corrected]

(a) A person may conduct an activity otherwise prohibited by § 922.213(a)(1) and (2) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Wisconsin Shipwreck Coast National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

■ 21. On page 973, in the third column, in amendatory instruction 60, correct paragraphs (a) and (j) to read as follows:

§ 922.216 [Corrected]

(a) A person may conduct an activity prohibited by § 922.213(a)(1) through (3) if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, approval, or other authorization, or tribal right of subsistence use or access in existence prior to the August 16, 2021 sanctuary designation and within the sanctuary designated area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the

requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

* * * * *

Correcting Amendments

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Amendments, Prohibited activities, Water resources.

For the reasons stated in the preamble, NOAA is amending 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Amend § 922.84 by revising paragraphs (a) and (j) to read as follows:

§ 922.84 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by § 922.82(a)(1) through (17) if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence prior to the June 9, 2015 effective date of sanctuary expansion and within the sanctuary expansion area and complies with § 922.10 and provided that the holder of the lease, permit, license, approval, or other authorization complies with the requirements of paragraph (e) of this section.

* * * * *

(j) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.37.

■ 3. Amend § 922.134 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 922.134 Review of certain State permits and leases.

(a) * * *

(2) The MOA specifies how the process of § 922.36 in subpart D will be administered within State waters within the sanctuary in coordination with State permit and lease programs as administered by the California Fish and Game Commission, the Department of

Fish and Wildlife and the California Coastal Commission.

(b) * * *

(2) The MOA specifies how the process of § 922.36 in subpart D will be administered within State waters within the Sanctuary in coordination with the State permit program.

■ 4. Amend § 922.193 by revising paragraph (d) introductory text and (d)(1) to read as follows and removing and reserving paragraph (d)(2):

§ 922.193 Prohibited or otherwise regulated activities.

* * * * *

(d) The prohibitions in paragraphs (a)(1) through (3) of this section do not apply to any activity:

(1) Specifically authorized by, and conducted in accordance with the scope, purpose, terms and conditions of, a permit issued pursuant to § 922.195 or a special use permit issued pursuant to subpart D of this part.

(2) [Reserved]

■ 5. Amend § 922.201 by revising paragraph (b) to read as follows:

§ 922.201 Definitions.

* * * * *

(b) All other terms appearing in the regulations in this subpart are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

■ 6. Amend § 922.211 by revising paragraph (b) to read as follows:

§ 922.211 Definitions.

* * * * *

(b) All other terms appearing in the regulations in this subpart are defined at § 922.11, and/or in the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401 *et seq.*, and 16 U.S.C. 1431 *et seq.*

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2023–06612 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[BOP Docket No. 1179; AG Order No. 5641–2023]

RIN 1120–AB79

Office of the Attorney General; Home Confinement Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act**AGENCY:** Office of the Attorney General, Department of Justice.**ACTION:** Final rule.

SUMMARY: The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) authorizes the Director of the Bureau of Prisons (“Director”), during the covered emergency period and upon a finding by the Attorney General that emergency conditions resulting from the Coronavirus Disease 2019 (“COVID–19”) pandemic materially affect the functioning of the Bureau of Prisons (“Bureau” or “BOP”), to lengthen the maximum amount of time for which a prisoner may be placed in home confinement. The Department of Justice (“Department” or “DOJ”) promulgates this final rule to affirm that the Director has the authority and discretion to allow prisoners placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period.

DATES: This rule is effective May 4, 2023.

FOR FURTHER INFORMATION CONTACT: Daniel J. Crooks III, Assistant General Counsel, Federal Bureau of Prisons, (202) 353–4885.

SUPPLEMENTARY INFORMATION:**I. Overview**

In this document, the Department promulgates a final rule (“rule”) granting the Director the authority and discretion to allow prisoners placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period. The Department published a proposed rule on this subject on June 21, 2022 (87 FR 36787), with a comment deadline of July 21, 2022.

II. Background¹

On March 13, 2020, the President of the United States declared that a national emergency existed with respect

to the outbreak of COVID–19, beginning on March 1, 2020.² COVID–19 is caused by an extremely contagious virus known as SARS-CoV–2 that has spread quickly around the world.³ COVID–19 most often causes respiratory symptoms, but can also attack other parts of the body. The virus spreads when an infected person breathes out droplets and particles, and another person breathes in air that contains these droplets and particles, or they land on another person’s eyes, nose, or mouth.⁴ Individuals in close contact with an infected person—generally less than six feet apart—are most likely to get infected. Although COVID–19 often presents with mild symptoms, some people become severely ill and die. Older adults and individuals with underlying medical conditions are at increased risk of severe illness.⁵

The U.S. Centers for Disease Control and Prevention (“CDC”) has recognized that the COVID–19 pandemic presents unique challenges for correctional facilities, such as those the Bureau manages.⁶ These challenges include a high risk of rapid transmission due to congregate living settings, and a high risk of severe disease due to the high prevalence of pre-existing conditions and risk factors associated with severe COVID–19 illness in prison populations. Since the earliest days of the pandemic, Department and Bureau officials have worked in tandem to develop and implement a plan to mitigate the high risk of rapid transmission of COVID–19 in the Federal prison system.

In March 2020, several United States Senators urged the Attorney General and the Director to utilize available statutory authorities to transfer vulnerable prisoners to home confinement.⁷ Transferring these

vulnerable prisoners to home confinement would remove them from an environment in which contagious viruses thrive due to the inherent risks of congregate settings and the unique restrictions that correctional custody places on an individual’s ability to maintain an appropriate social distance, as well as permit them to undertake other measures to protect themselves in ways they are not able to do in secure custody.

The Attorney General issued a memorandum on March 26, 2020, instructing the Director to prioritize the use of home confinement, where authorized, to protect the health and safety of inmates and Bureau staff by minimizing the risk of COVID–19 spread in Bureau facilities, while continuing to keep communities safe.⁸ The Attorney General directed that the determination of whether to place an inmate in home confinement should be made on an individualized basis, considering the totality of the inmate’s circumstances, statutory requirements, and a non-exhaustive list of discretionary factors:

- The age of the inmate and the vulnerability of the inmate to COVID–19;
- The security level of the facility housing the inmate, with priority given to inmates residing in low- and minimum-security facilities;
- The inmate’s conduct in prison;
- The inmate’s risk score under the Prisoner Assessment Tool Targeting Estimated Risk and Needs (“PATTERN”);⁹
- Whether the inmate had a reentry plan that would help prevent recidivism and maximize public safety; and
- The inmate’s crime of conviction and the danger the inmate would pose to the community.¹⁰

The Attorney General’s memorandum explained that some offenses would

² Proclamation 9994, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

³ U.S. Centers for Disease Control and Prevention, *Basics of COVID–19* (last updated Nov. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html>.

⁴ U.S. Centers for Disease Control and Prevention, *How COVID–19 Spreads* (last updated Aug. 11, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

⁵ U.S. Centers for Disease Control and Prevention, *Basics of COVID–19* (last updated Nov. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/basics-covid-19.html>.

⁶ CDC, *Considerations for Modifying COVID–19 Prevention Measures in Correctional and Detention Facilities Webinar Transcript* (June 22, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/videos/covid-19-prevention/Webinar-Transcript-508.pdf>.

⁷ Letter for William P. Barr, Attorney General, and Michael Garvajal, Director, BOP, from Senator Richard J. Durbin et al. (Mar. 23, 2020), <https://www.durbin.senate.gov/imo/media/doc/>

Letter.%20to%20DOJ%20and%20BOP%20on%20COVID-19%20and%20FSA%20provisions%20-%20final%20bipartisan%20text%20with%20signature%20blocks.pdf.

⁸ Memorandum for the Director, BOP, from the Attorney General, *Re: Prioritization of Home Confinement As Appropriate in Response to COVID–19 Pandemic* (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

⁹ PATTERN is a tool that measures an inmate’s risk of recidivism and provides her with opportunities to reduce her risk score. See, e.g., BOP, *PATTERN Risk Assessment*, <https://www.bop.gov/inmates/fsa/pattern.jsp>. It was created pursuant to the First Step Act of 2018. See Public Law 115–391, sec. 101(a), sec. 3632(a), 132 Stat. 5194, 5196–97.

¹⁰ Memorandum for the Director, BOP, from the Attorney General, *Re: Prioritization of Home Confinement As Appropriate in Response to COVID–19 Pandemic* (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

¹ For a more detailed discussion of the overview and background of CARES Act home confinement, see Sections II.A. and II.B. of the preamble to the proposed rule. 87 FR 36788–95.

render an inmate ineligible for home confinement, and that other serious offenses would weigh more heavily against consideration for home confinement. It further explained that inmates who engaged in violent or gang-related activity while in prison, those who incurred a violation within the past year, or those with a PATTERN score above the “minimum” range would not receive priority consideration under the memorandum.¹¹

On March 27, 2020, the day after the Attorney General’s first memorandum, the President signed into law the CARES Act,¹² which expanded the Director’s authority and discretion to place inmates in home confinement in direct response to the COVID–19 pandemic during a “covered emergency period.” In relevant part, the CARES Act provides that the “covered emergency period” begins the date the President declared a national emergency with respect to COVID–19 and ends 30 days after the date on which the national emergency terminates.¹³

On April 3, 2020, the Attorney General issued a second memorandum to the Director, finding that emergency conditions were materially affecting the functioning of the Bureau, and instructing the Director to use the expanded home confinement authority provided in the CARES Act to place in home confinement the most vulnerable inmates at the facilities most affected by COVID–19.¹⁴ The Bureau subsequently issued internal guidance that adopted the criteria in the Attorney General’s memoranda and prioritized for home confinement inmates who had served 50 percent or more of their sentences, or those who had 18 months or less

remaining on their sentences and had served more than 25 percent of that sentence.¹⁵ The Bureau later clarified that inmates with low or minimum PATTERN scores would qualify equally for home confinement, and that the factors assessed to ensure inmates were suitable for home confinement included verifying that an inmate’s current or prior offense was not violent, not a sex offense, and not terrorism-related.¹⁶ Since March 2020, the Bureau has significantly increased the number of inmates placed in home confinement under the CARES Act and other preexisting authorities. Between March 26, 2020, and January 23, 2023, the Bureau placed in home confinement a total of 52,561 inmates.¹⁷ The majority of those inmates have since completed their sentences; as of January 23, 2023, there were 5,597 inmates in home confinement.¹⁸ According to the Bureau, 3,434 of these inmates were placed in home confinement pursuant to the CARES Act.¹⁹

An inmate placed in home confinement is not considered released from Bureau custody. Rather, the inmate continues serving their sentence at home in their community. These individuals must follow a set of rules designed to aid in their management, facilitate their reintegration into society, and support their rehabilitative efforts. For example, they are required to remain in the home during specified hours and are permitted to leave only for work or other preapproved activities, such as occupational training or therapy. Moreover, inmates in home confinement must submit to drug and alcohol testing and counseling requirements. Supervision staff monitor inmates’ compliance with the conditions of home confinement by electronic monitoring equipment or, in a few cases for medical or religious accommodations, frequent telephone and in-person contact.²⁰ To remain in

home confinement, inmates must comply with their agreed-upon conditions of supervision.²¹

Section 12003(b)(2) of the CARES Act authorizes the Director to place inmates in home confinement, notwithstanding the time limits set forth in 18 U.S.C. 3624(c)(2), during and for 30 days after the termination of the national emergency declaration concerning COVID–19, provided the Attorney General has made a finding that emergency conditions are materially affecting the Bureau’s functioning. By the Act’s plain terms, the Director’s authority to place an inmate in home confinement under the CARES Act expires at the end of the covered emergency period, or if the Attorney General revokes his finding.

The Act is silent, however, as to whether the Director has discretion to determine whether specific individuals placed in home confinement under the CARES Act may remain there after the expiration of the covered emergency period, or whether all inmates who are not eligible for home confinement under another authority must be returned to secure custody. The Department has concluded that the most reasonable interpretation of the CARES Act permits the Bureau to continue to make individualized determinations about the conditions of confinement for inmates placed in home confinement under the CARES Act, as it does with respect to all prisoners,²² following the end of the covered emergency period. In its recent opinion, the Office of Legal Counsel (“OLC”) concluded that section 12003(b)(2) does not require the Bureau to return to secure custody inmates in CARES Act home confinement following the end of the covered emergency period. *See Discretion to Continue the Home-Confinement Placements of Federal Prisoners After the COVID–19 Emergency*, 45 Op. O.L.C.

(Dec. 21, 2021) (“*Home-Confinement Placements*”). The Department hereby incorporates the analysis from that OLC opinion into the preamble of this final rule. Even if the relevant provision of the CARES Act were considered ambiguous, however, the Department’s interpretation represents a reasonable one that would warrant deference under *Chevron, U.S.A., Inc. v. Natural*

Notice (Dec. 15, 2017), https://www.bop.gov/policy/progstat/7320_001_CN-2.pdf.

²¹ See *id.* at 12–15 (including agreement outlining terms of home confinement); see also BOP Form BP–A0548, Home Confinement and Community Control Agreement (June 2010), https://www.bop.gov/policy/forms/BP_A0548.pdf.

²² See 18 U.S.C. 3621(a) (“A person who has been sentenced to a term of imprisonment . . . shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed . . .”).

¹¹ Memorandum for the Director, BOP, from the Attorney General, *Re: Prioritization of Home Confinement As Appropriate in Response to COVID–19 Pandemic* (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf. This criterion was later updated to include low and minimum PATTERN scores. See Memorandum for Chief Executive Officers, from Andre Matevosian *et al.*, BOP, *Re: Home Confinement* (Apr. 13, 2021), https://www.bop.gov/foia/docs/Home%20Confinement%20memo_2021_04_13.pdf.

¹² “During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.” CARES Act, Public Law 116–136, sec. 12003(b)(2), 134 Stat. 281, 516 (2020).

¹³ *Id.* sec. 12003(a)(2).

¹⁴ Memorandum for the Director, BOP, from the Attorney General, *Re: Increasing Use of Home Confinement at Institutions Most Affected by COVID–19*, at 1 (Apr. 3, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf.

¹⁵ See, e.g., Memorandum for Chief Executive Officers, from Andre Matevosian *et al.*, BOP, *Re: Home Confinement* (Nov. 16, 2020), https://www.bop.gov/foia/docs/Updated_Home_Confinement_Guidance_20201116.pdf.

¹⁶ See Memorandum for Chief Executive Officers, from Andre Matevosian *et al.*, BOP, *Re: Home Confinement* (Apr. 13, 2021), https://www.bop.gov/foia/docs/Home%20Confinement%20memo_2021_04_13.pdf.

¹⁷ See BOP, *Frequently Asked Questions regarding potential inmate home confinement in response to the COVID–19 pandemic*, <https://www.bop.gov/coronavirus/faq.jsp> (last visited Jan. 3, 2023).

¹⁸ See *id.*

¹⁹ As of January 25, 2023, 5,613 inmates are currently in home confinement, with 3,436 of those individuals in CARES Act home confinement.

²⁰ BOP, Program Statement 7320.01, Home Confinement (Sept. 6, 1995), as updated by Change

Resource Defense Council, Inc., 467 U.S. 837 (1984).²³

While the home confinement program under the CARES Act has been a measurable success, inmates and their families have sought assurance that those already in home confinement will not be abruptly returned to secure custody after the end of the covered emergency period. The Department remains sensitive to these concerns and agrees with the expressions of support from some Members of Congress for expanding the use of home confinement based on the needs of individual offenders.²⁴ With that in mind, the Department's interpretation is that any ambiguity in the CARES Act should be read to provide the Director with discretion to allow inmates placed in home confinement who have been successfully serving their sentences in the community to remain there, rather than require the Director to return such inmates to secure custody *en masse* without making an individualized assessment or identifying a penological, rehabilitative, public health, or public safety basis for the action. Although placements under the CARES Act were not made for reentry purposes, the Department concludes that the best use of Bureau resources and the best outcome for affected offenders is to allow the agency to make individualized assessments of CARES Act placements, with a focus on supporting inmates' eventual reentry into the community.

After publication of this final rule, the Department and the Bureau will work together to develop guidance to explain objective criteria the Bureau will use to make individualized determinations as to whether any inmate placed in home confinement under the CARES Act should be returned to secure custody. Providing the Bureau with discretion to determine whether any inmate placed in home confinement under the CARES Act should return to secure custody will bolster the Bureau's ability to efficiently

manage its resources and nimbly address changing circumstances in the community, in relation to the needs and profiles of individual inmates.

* * * * *

For the reasons provided in this final rule, the Department codifies the Director's discretion to allow inmates placed in home confinement pursuant to the CARES Act to remain in home confinement after the covered emergency period expires. This rule reflects the interpretation of the CARES Act set forth in OLC's December 21, 2021, opinion,²⁵ is consistent with recent legislation from Congress supporting expanded use of home confinement,²⁶ and advances the best interests of inmates and the Bureau from penological, rehabilitative, public health, and public safety perspectives.²⁷

III. Discussion of Comments and the Department's Responses.

A. General Overview

The Department received a total of 71 comments in response to the notice of proposed rulemaking. Of those 71 comments, 66 were substantive,²⁸ and of those 66 substantive comments, three were neutral (neither in support of, nor in opposition to, the proposed rule) and one was opposed, leaving 62 total substantive comments in support of the final rule. Of the 62 total substantive comments in support, 28 are substantive statements in support, with no suggested revisions, while 34 are substantive statements in support, with suggested revisions.

B. Comments in Support

The 62 substantive comments in support collectively emphasized several benefits to individuals and society of allowing inmates to remain in CARES Act home confinement after the expiration of the covered emergency period. Among the benefits mentioned are (1) the already-active and continuing process of their reintegration into society; (2) rehabilitative steps they have taken toward becoming contributing members of their community; (3) gainful employment they have secured or educational

courses in which they have enrolled; (4) continued care for children or elderly parents; and (5) relationships with family and friends that have begun to mend. Additional benefits in support include (6) the notable cost savings to taxpayers; and (7) a reduction in health and safety risks to Bureau staff and inmates that result from overcrowding.

While the 34 substantive statements in support, with suggested revisions, were in favor of the final rule, these commentors also put forth four revisions, and urged the Department either to place the revisions in the text of the final rule or to address them in a separate rulemaking. The various suggested revisions include: (1) expanding CARES Act home confinement eligibility based on existing law to increase the number of inmates considered for placement; (2) clarifying that sentence length will not be used as a criterion for return to secure custody; (3) establishing clear objective criteria Bureau-wide so inmates in home confinement are on notice of what potential rule violations would prompt a return to secure custody; and (4) creating an administrative process by which inmates accused of violations and presented with a return to secure custody can avail themselves of due process protections and challenge their alleged violations. Each of these four suggested revisions is discussed separately in Section C of this preamble.

The Department first briefly addresses each of the 7 benefits raised by the 62 comments in support, noting that 22 of the commentors self-identified as either a Bureau inmate currently in CARES Act home confinement, or a family member of a Bureau inmate affected directly by CARES Act home confinement.

(1) The Already-Active Process of These Individuals' Reintegration Into Society

Several commentors noted that some inmates have been in home confinement since the earliest days of the pandemic, meaning they have already spent nearly two and a half years reintegrating into society. One commentor noted that since being placed in home confinement on December 29, 2020, she has become a successfully integrated, law-abiding citizen. She urged the Department to allow those like her to continue being successful by remaining in home confinement. Another commentor stated he has just over 4 years remaining on his sentence, and that he is employed and provides care for his elderly parents. He also noted he has lost weight and that, as a result, his diabetes and blood pressure are better managed.

²³ See *Home-Confinement Placements*, 45 Op. O.L.C. __, at *2, *15.

²⁴ See, e.g., Senate Committee on the Judiciary, *Durbin, Booker: We Should Not Force Individuals on Home Confinement to Return to Prison* (July 20, 2021), <https://www.judiciary.senate.gov/press/dem/releases/durbin-booker-we-should-not-force-individuals-on-home-confinement-to-return-to-prison>; Letter for Colette S. Peters, Director, BOP, from Representative Bonnie Watson Coleman, Representative Pramila Jayapal, and Representative Henry C. "Hank" Johnson Jr. (Oct. 7, 2022), https://watsoncoleman.house.gov/imo/media/doc/letter_to_bop_dir_peters.pdf; Press Release, Representative Kelly Armstrong, *Armstrong Supports DOJ Decision Allowing Inmates Released Under CARES Act to Remain in Home Confinement* (Dec. 21, 2021), <https://armstrong.house.gov/media/press-releases/armstrong-supports-doj-decision-allowing-inmates-released-under-cares-act>.

²⁵ See generally Section II.C. of the preamble to the proposed rule (87 FR 36790–92).

²⁶ See generally Section II.D. of the preamble to the proposed rule (87 FR 36792–93).

²⁷ See generally Section II.E. of the preamble to the proposed rule (87 FR 36793–95).

²⁸ Of the 71 comments, three were duplicate electronic submissions; one comment was completely blank; and one comment was untimely, although the attachment to it was still added to comment BOP–2022–0001–0066, which was timely filed by the same organization. Thus, there are 66 substantive comments in total.

Yet another commentor, in home confinement since May 2021, remarked that he started a job as a paralegal, became a part-time student at a university, and is engaged in rebuilding relationships with his parents, who are in their 70s.

(2) The Rehabilitative Steps These Individuals Have Taken Toward Becoming Valuable Members of Their Communities

Several commentors touted the rehabilitative steps inmates in home confinement have already taken. One commentor emphasized that individuals uninterested in pursuing criminal activity inside prison do better at home and with supportive families, rather than remaining inside a prison where such criminal enterprises sometimes thrive. Another commentor, in expressing concern about whether he would be among the inmates recalled to secure custody from home confinement, noted that such a result would separate him from his job, church, family care, and his own medical care—all of which have aided him in his rehabilitation. A commentor in home confinement since May 2020 said being home has empowered him and other elderly inmates like him to become productive members of society once again, and to proactively manage their age-related health conditions.

(3) The Gainful Employment They Have Secured or Educational Courses in Which They Have Enrolled

Several commentors noted that some inmates in home confinement have enrolled in classes or secured jobs. Enrollment in college, gainful employment, and community volunteer work have been made possible by these inmates' placement in home confinement in the communities where they intend to live. They have been able to develop and improve their future educational or employment opportunities in their communities.

(4) The Care for Elderly Parents or Children for Whom They Have Been Providing

Several commentors specifically raised the issues of parent-care and childcare, and how being home has enabled them to provide that care and lessen the burden for other caregivers. One commentor underscored how his time in home confinement has allowed him to care for his elderly parents, both of whom have experienced markedly improved health due, in part, to his care for them. Other commentors emphasized the familial benefits of

having mothers and fathers at home with children.

(5) The Relationships With Family and Friends That Have Begun To Mend

Many commentors noted that inmates placed in home confinement have had months, and, in some cases, years, to begin the time-intensive and difficult process of trying to mend relationships with family and friends. The crux of these commentors' concern was that abruptly returning any of these inmates to secure custody would jeopardize the progress already made and would threaten to negate the efforts already expended.

(6) The Notable Cost Savings To Taxpayers

Several commentors also touted as a benefit to taxpayers the statistics cited in the proposed rule, showing how much less it costs to supervise an inmate in CARES Act home confinement than housing that same individual in secure custody inside a Bureau institution. Most of these commentors indicated they view a reduction in prison populations by operation of a program that supervises home confinement inmates for significantly less money to be a win-win for the taxpaying public and the overburdened prison system.

(7) The Reduction in Health and Safety Risks to Bureau Staff and Inmates That Result From Crowding

A few commentors viewed the proposed rule as providing a benefit to the health and safety of inmates and staff, alike. With vulnerable inmates being transferred to home confinement, prison populations shrink and the problem of crowding improves, thereby reducing health and safety risks to other inmates and Bureau staff.

Department Response: The Department agrees with these comments and believes the seven benefits noted by them are, indeed, important considerations in support of this final rule. Congress itself, as demonstrated through the passage of the Second Chance Act of 2007 ("SCA") and the First Step Act of 2018, has consistently shown its intention in passing legislation aimed at appropriately preparing inmates for successful reintegration into society. Part of addressing this congressional intent involves an ongoing reevaluation of the societal and individualized benefits of incarceration versus non-custodial rehabilitative programs.

The Department and the Bureau know home confinement provides important penological benefits as one of the last

steps in the reentry process. An inmate would usually be moved over the course of a sentence to progressively less restrictive conditions of confinement—often from a secure prison, to a residential reentry center, to home confinement—to provide transition back into the community with support, resources, and supervision from the agency. Inmates who are provided the types of benefits home confinement can afford, such as opportunities to rebuild ties to family and to return to the workplace and to the community, may ultimately be less likely to recidivate.²⁹ Accordingly, the best use of Bureau resources and the best outcome for affected offenders is to allow the agency to make individualized assessments of CARES Act placements with a focus on inmates' eventual reentry into the community.

Supervision of inmates in home confinement is also significantly less costly for the Bureau than housing inmates in secure custody. In Fiscal Year ("FY") 2019, the cost of incarceration fee ("COIF") for a Federal inmate in a Federal facility was \$107.85 per day; in FY 2020, it was \$120.59 per day.³⁰ In contrast, according to the Bureau, an inmate in home confinement costs an average of \$55.26 per day—less than half the cost of an inmate in secure custody in FY 2020. Although the Bureau's decision to place an inmate in home confinement is based on many factors, where the Bureau deems home confinement appropriate for a particular inmate, that decision has the added benefit of reducing the Bureau's expenditures. Such cost savings were among the intended benefits of the First Step Act, regarding which Congress cited a need to "control corrections spending, manage the prison population, and reduce recidivism."³¹

Finally, the Bureau needs flexibility to consider whether continued home

²⁹ See SCA, Public Law 110-199, sec. 3(b)(6), (7), (19), 122 Stat. 657, 659-60 (2008) ("According to the Bureau of Prisons, there is evidence to suggest that inmates who are connected to their children and families are more likely to avoid negative incidents and have reduced sentences. . . . Released prisoners cite family support as the most important factor in helping them stay out of prison. . . . Transitional jobs programs have proven to help people with criminal records to successfully return to the workplace and to the community, and therefore can reduce recidivism.").

³⁰ Annual Determination of Average Cost of Incarceration Fee (COIF), 86 FR 49060, 49060 (Sept. 1, 2021).

³¹ See, e.g., H.R. Rep. No. 115-699, at 22-24 (2018) ("The federal prison system needs to be reformed through the implementation of corrections policy reforms designed to enhance public safety by improving the effectiveness and efficiency of the federal prison system in order to control corrections spending, manage the prison population, and reduce recidivism.").

confinement for CARES Act inmates is in the interest of the public health, and whether reintroduction of CARES Act inmates into secure facilities would create the risk of new outbreaks of COVID-19 among the prison population—even after the conclusion of the broader pandemic emergency. It is now well established that congregate living settings, and correctional facilities in particular, heighten the risk of COVID-19 spread due to multiple factors.³² Data have shown that crowding in prisons, which makes social distancing difficult, if not impossible, is associated with increased incidence of COVID-19.³³ Although COVID-19 vaccines are widely available and effective at preventing serious illness, hospitalization, and death, and also help protect against infection, not all incarcerated persons will elect to receive COVID-19 vaccinations,³⁴ and breakthrough infections may occur even in fully vaccinated persons, who are then able to spread the disease.³⁵

More contagious variants of the virus that causes COVID-19 could exacerbate the spread, and it is unknown whether currently available vaccines will be effective against new variants that may arise. Accordingly, it is appropriate for the Department to consider whether the reintroduction into prison populations of individuals placed in home confinement, in part upon consideration of their vulnerability to COVID-19,³⁶

and the resulting increased crowding in prison settings, could lead to new COVID-19 outbreaks, including breakthrough cases in fully vaccinated inmates and infections in the most vulnerable prisoners.

C. Comments With Suggested Revisions

The 34 substantive statements in support, with suggested revisions, collectively propose four changes either to the final rule or by operation of a separate notice-and-comment rulemaking. Each proposed revision is discussed below.

(1) Expanding CARES Act Home Confinement Eligibility Based on Existing Law To Increase the Number of Inmates Who Can Be Considered

Twelve commentors specifically called for the expansion of CARES Act home confinement to increase the number of inmates who initially qualify. These comments focused on expansion of the program to include more non-violent offenders (especially those with drug offenses), regardless of the time left to serve on their sentences. These commentors suggest that violent offenders should remain in secure custody, but they urge the Department and the Bureau to broaden the criteria for CARES Act home confinement so that others may qualify. These commentors cite to the statistics and arguments contained in the proposed rule in support of the conclusion that the CARES Act home confinement program not only works, but also has been a success.

Department Response: The Department interprets these commentors' suggestion to be an expansion of the current eligibility criteria that are in place and that were developed by the Bureau in light of the Attorney General's April 3, 2020, memorandum. In that memorandum, the Attorney General instructed the Director to use the expanded home confinement authority provided in the CARES Act to place in home confinement the most vulnerable inmates at the facilities most affected by COVID-19, following quarantine to prevent the spread of COVID-19 into the community, and guided by the factors set forth in the March 26, 2020, memorandum.³⁷ The April 3, 2020,

memorandum made clear that although the Bureau should maximize the use of home confinement, particularly at affected institutions, the Bureau must continue to make an individualized determination whether home confinement is appropriate for each inmate considered and must continue to act consistently with its obligation to preserve public safety.³⁸

The Bureau subsequently issued internal guidance that, in addition to adopting the criteria in the Attorney General's memoranda, prioritized for home confinement inmates who had served 50 percent or more of their sentence or those who had 18 months or less remaining on their sentence and had served more than 25 percent of that sentence.³⁹ That guidance also instructed that pregnant inmates should be considered for placement in a community program, to include home confinement.⁴⁰ The BOP later clarified that inmates with low or minimum PATTERN scores qualify equally for home confinement, and that the factors assessed to ensure inmates are suitable for home confinement include verifying that an inmate's current or a prior offense was not violent, not a sex offense, and not terrorism related.⁴¹ It further implemented a requirement that inmates placed in home confinement receive instruction about how to protect themselves and others from COVID-19 transmission, based on guidance from the CDC.⁴²

The Department believes that allowing the Bureau to continue using internally developed criteria to evaluate inmates' requests for home confinement is consistent with the CARES Act and the Attorney General's guidance, and that such criteria have already led to a marked increase in the number of inmates placed in CARES Act home confinement. Since March 2020, following the Attorney General's directive, the Bureau has significantly increased the number of inmates placed in home confinement under the CARES Act and other preexisting authorities. Accordingly, the Department declines to limit the discretion afforded to the Director to implement certain criteria that, in the Director's judgment, are necessary to the proper allocation of Bureau resources.

³² See, e.g., Pandemic Response Accountability Committee, *Key Insights: COVID-19 in Correctional and Detention Facilities*, at 2 (May 12, 2021), <https://www.oversight.gov/sites/default/files/oig-reports/PRAC/Key-Insights-COVID-19-Correctional-and-Detention-Facilities.pdf>; Nat'l Academies of Sciences, Engineering, and Medicine, *Decarcerating Correctional Facilities During COVID-19: Advancing Health, Equity, and Safety* 23–44 (Emily A. Wang et al., eds., 2020), <https://doi.org/10.17226/25945>.

³³ Abigail I. Leibowitz et al., *Association Between Prison Crowding and COVID-19 Incidence Rates in Massachusetts Prisons, April 2020–January 2021*, 181 JAMA Internal Med. 1315 (2021); see also Nat'l Academies of Sciences, Engineering, and Medicine, *Decarcerating Correctional Facilities During COVID-19: Advancing Health, Equity, and Safety* 26–27 (Emily A. Wang et al., eds., 2020), <https://doi.org/10.17226/25945>.

³⁴ An early study demonstrated that around 64 percent of persons incarcerated in BOP institutions who were offered COVID-19 vaccinations accepted them. See Liesl M. Hagan et al., *COVID-19 vaccination in the Federal Bureau of Prisons, December 2020–April 2021*, 39 Vaccine 5883, 5883, 5887 (2021).

³⁵ CDC, *COVID-19 After Vaccination: Possible Breakthrough Infection* (updated June 23, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>.

³⁶ See Memorandum for the Director, BOP, from the Attorney General, *Re: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic* at 1–2 (Mar. 26, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf (directing the Bureau to consider,

among other discretionary factors, “[t]he age and vulnerability of [an] inmate to COVID-19” when assessing which inmates should be placed in home confinement).

³⁷ Memorandum for the Director, BOP, from the Attorney General, *Re: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19*, at 2 (Apr. 3, 2020), https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf.

³⁸ See *id.* at 3.

³⁹ See, e.g., Memorandum for Chief Executive Officers, from Andre Matevosian et al., *BOP, Re: Home Confinement*, at 2 (Nov. 16, 2020), https://www.bop.gov/foia/docs/Updated_Home_Confinement_Guidance_20201116.pdf.

⁴⁰ *Id.*

⁴¹ See *id.*

⁴² See *id.* at 3.

(2) Clarifying That Sentence Length Will Not Be Used as a Criterion for Return To Secure Custody

Ten commentors urged the Department not to allow the Bureau to consider the length of time remaining on an inmate's sentence as an independent criterion as part of any set of objective factors used to determine whether an inmate may remain in home confinement. Commentors who raised this concern do not think the Director's discretion should extend to allowing the length of time remaining on an inmate's sentence to be an independent criterion for return-to-custody consideration. As one commentor wrote, language should be included to clarify "that no one should be returned to prison solely based on the amount of time they have left" on their sentence. In support of this proposed revision, the same commentor cited to a sentence in the proposed rule that reads in part that "the widespread return of prisoners to secure custody without a disciplinary reason would be unprecedented." The comment continued by noting the seemingly conflicting language in the Bureau's former General Counsel's December 10, 2021, memorandum, in which he noted that the Bureau's criteria for determining which inmates should return to secure custody "will likely include . . . the length of time remaining on the sentence."⁴³ The comment also highlighted these sentences from that memorandum: "Sentence length is likely to be a significant factor, as the more time that remains will provide the agency a more meaningful opportunity to provide programming and services to the offender in a secure facility. . . . It is likely that inmates that have longer terms remaining would be returned to secure custody, while those with shorter terms left who are doing well in their current placement would be allowed to remain there, subject to the supervisory conditions described above."⁴⁴ The commentor's concern is that the representations in the December 10, 2021, memorandum make it reasonably clear that the Bureau would consider the length of time remaining on a sentence as one of several criteria developed to determine which inmates will return to secure custody.

Department Response: The Department understands this concern, which, at its core, laments the lack of any definitive assurance upon which individuals in CARES Act home confinement can currently rely to know whether the length of time remaining on their sentences will prompt their return to secure custody. The Department reiterates that, under typical circumstances, inmates who have made the transition to home confinement would not be returned to a secure facility absent a disciplinary reason. This is because the typical purpose of home confinement is to allow inmates to readjust to life in the community. Removal from the community of those already making progress in home confinement would frustrate this goal, and the widespread return of prisoners to secure custody without a disciplinary reason would be unprecedented and out of step with the reentry-specific goals of home confinement, as mentioned throughout this final rule.

While the Department understands these commentors' concern with respect to this issue, the Department declines to include in the final rule language withdrawing discretion from the Director to consider the length of time remaining on an inmate's sentence as part of a set of criteria to determine which inmates may return to secure custody after the end of the covered emergency period. Allowing the Bureau discretion to determine whether inmates who have been successfully serving their sentences in the community should remain in home confinement will allow the Bureau to ground those decisions upon case-by-case assessments consistent with penological, rehabilitative, public health, and public safety goals.

However, the Department re-emphasizes that following the issuance of this final rule, the Bureau will develop, in consultation with the Department, guidance to explain criteria it will use to make individualized determinations as to whether any inmate placed in home confinement under the CARES Act should be returned to secure custody. The Department and the Bureau commit to working together as expeditiously as practicable after issuance of this final rule to develop these criteria.

(3) Establishing Clear Objective Criteria Bureau-Wide so Inmates in Home Confinement are on Notice of What Potential Rule Violations Would Prompt a Return To Secure Custody

Fourteen commentors expressed concern that the rule does not contain objective criteria for what constitutes a

violation that would return an inmate to secure custody, and four commentors specifically expressed that the Director should not be granted the discretion to develop criteria to be used to determine which individuals may be returned to secure custody. These four commentors ask that the objective criteria be published in this final rule or, alternatively, developed as part of a separate notice-and-comment rulemaking.

The concerns about a lack of objective criteria in the rule are rooted in these commentors' belief that the Bureau will abuse the discretion given by the final rule and, as a result, will develop a set of criteria they worry will run counter to the goals and intent expressed in this rule. These commentors also argued that the individuals in CARES Act home confinement should know sooner rather than later whether they may be one of those subject to being returned to secure custody. Commentors urged the Department to adopt in this final rule a presumption that individuals placed in CARES Act home confinement should remain there absent a showing they have engaged in a significant violation of their conditions of release. Another commentor stated that language should be included limiting the Director's discretion to return an inmate to secure custody only "for a serious violation of their terms of release" or "for new crimes" committed while in home confinement. The concern with the discretion given to the Director is that it allows the Director "to return individuals to prison for ill-defined and vague reasons." This lack of boundaries, the commentors continued, is a "potential loophole for arbitrary and capricious decision-making."

These commentors go on to say that the Bureau "should issue a new proposed rule—subject to notice and comment rulemaking—that clearly enumerates the conduct that would warrant return to a correctional facility. It should also make clear that the enumerated conduct is limited to only the most serious and verified violations." They also urged the Department to "establish clear criteria and procedures for returning an individual from home confinement to a correctional facility." Specifically, "[a]ny return to a correctional facility should be triggered only by a serious violation of the conditions of home confinement, determined on the basis of articulated factors, and consistent with constitutional due process." The commentors' concerns involve primarily what they describe as "technical missteps" that do not threaten community safety and should not be

⁴³ See Memorandum for Christopher H. Schroeder, Assistant Attorney General, OLC, from Ken Hyle, General Counsel, BOP, *Re: Views Regarding OLC Opinion, "Home Confinement of Federal Prisoners After the COVID-19 Emergency"* dated January 15, 2021, at 5–6 (Dec. 10, 2021), https://www.aclu.org/sites/default/files/field_document/bop_cares_memo_12.10.21.pdf.

⁴⁴ *Id.* at 6.

grounds for a revocation. These commentors end with: “A clear, publicly available rule that establishes how BOP will exercise any discretion, that is available to the public and individuals in BOP custody, and that is not subject to easy change outside the public view, will assist in providing that stability. Indeed, engaging in rulemaking here is legally mandated if BOP intends to treat this guidance as internally binding on BOP officials. For all relevant purposes, binding guidance constitutes a rule and should be subject to notice-and-comment procedures. See generally *Appalachian Power Co. v. Environmental Protection Agency*, 208 F.3d 1015 (D.C. Cir. 2000).”

Another commentor, concerned with “vague and amorphous standards for revoking supervision,” argued for objective and clearly defined criteria for reincarceration, along with a “graduated sanctions matrix for technical violations . . . that provide[s] for interim sanctions for low-level or technical violations of supervision conditions.” This commentor continued: “These matrices provide supervision officers tools to address minimal non-compliance without resorting to total revocation, which is costly and administratively burdensome. A similar matrix should be developed as part of the Bureau’s new guidance on revocation of home confinement.”

Department Response: The Department remains sensitive to commentors’ desire for a clear set of criteria the Bureau will use to determine whether an inmate will be returned to secure custody. However, the Department declines to use this final rule to limit the discretion afforded to the Director to develop a set of objective criteria, in consultation with the Department. The Department also disagrees that the creation of these objective criteria must be done through a separate notice-and-comment rulemaking. Instead, the Department believes the Bureau’s future development of policy and its issuance of advisory memoranda can provide the clarity sought in these comments.

Allowing the Bureau discretion to develop these criteria will leave the Bureau with one of its most important tools—the ability to effectively manage bedspace based on the needs of the offender, security requirements, and agency resources. Congress has explicitly provided the Bureau responsibility for maintaining custody of Federal inmates⁴⁵ and discretion to

designate the place of those inmates’ imprisonment.⁴⁶ Courts have recognized the Bureau’s authority to administer inmates’ sentences,⁴⁷ supporting this management principle. The Bureau’s ability to control populations in Bureau-operated institutions as well as, where appropriate, in the community, allows the Bureau flexibility to respond to circumstances as varied as increased prosecutions or responses to local or national emergencies or natural disasters. Providing the Bureau with discretion to determine whether any inmate placed in home confinement under the CARES Act should return to secure custody will increase the Bureau’s ability to respond to outside circumstances and manage its resources in an efficient manner that considers both public safety and the needs of individual inmates.

The Department emphasizes that, under typical circumstances, inmates who have made the transition to home confinement would not be returned to a secure facility absent a disciplinary reason, because the typical purpose of home confinement is to allow inmates to readjust to life in the community. Removal from the community would therefore frustrate this goal. And the widespread return of prisoners to secure custody without a disciplinary reason would be unprecedented. Moreover, allowing the Bureau discretion to determine whether inmates who have been successfully serving their sentences in the community should remain in home confinement will allow the Bureau to ground those decisions upon case-by-case assessments consistent with penological, rehabilitative, public health, and public safety goals.⁴⁸

Additionally, the percentage of inmates placed in home confinement under the CARES Act that have had to

committed to the custody of the Bureau of Prisons until the expiration of the term imposed . . .”).

⁴⁶ See 18 U.S.C. 3621(b) (providing that “[t]he Bureau of Prisons shall designate the place of the prisoner’s imprisonment,” taking into account factors such as facility resources; the offense committed; the inmate’s history and characteristics; recommendations of the sentencing court; and any pertinent policy of the United States Sentencing Commission). Section 3621(b) also authorizes the Bureau to direct the transfer of a prisoner at any time, subject to the same individualized assessment. See *id.*

⁴⁷ See, e.g., *United States v. Wilson*, 503 U.S. 329, 335 (1992); *Rodriguez v. Copenhagen*, 823 F.3d 1238, 1242 (9th Cir. 2016).

⁴⁸ Such individualized assessments are consistent with direction the Bureau has received from Congress in other contexts. For example, Congress has made clear that the Bureau must base its determination of an inmate’s place of imprisonment on an individualized assessment that takes into account factors such as the inmate’s history and characteristics. See 18 U.S.C. 3621(b).

be returned to secure custody for any violation of the rules of home confinement is very low; the number of inmates who were returned as a result of new criminal activity is a fraction of that. Instead, the vast majority of inmates in CARES Act home confinement have complied with the terms of the program and have been successfully serving their sentences in the community. Accordingly, the Department does not believe the statistically low numbers of inmates returned to custody merit inclusion of criteria in this final rule or in a separate notice-and-comment rulemaking. The Department and the Bureau remain committed to considering multiple factors when developing common criteria to govern these case-by-case assessments, thereby promoting operational efficiency. In furtherance of that commitment, the Department and Bureau intend to make the agreed-upon criteria publicly available once developed.

(4) Creating An Administrative Procedure by Which Inmates Accused of Violations and Threatened With a Return To Secure Custody Can Avail Themselves of Due Process Protections and Challenge Their Alleged Violations

Fourteen commentors expressed support for the creation of an administrative process by which inmates accused of violating the terms of their home confinement may challenge those violations prior to being returned to secure custody. Specifically, these commentors urged the Department to ensure individuals receive due process, including the opportunity to contest the allegations at a hearing before a neutral decision maker, with the assistance of counsel and the ability to confront witnesses and present evidence. They also indicated their belief that an inmate’s placement in CARES Act home confinement creates a liberty interest in remaining on that status, and the threatened revocation of such an interest must be preceded by a process similar to that used in parole or probation revocations. Some of the commentors expressed concern that the Bureau did not permit an inmate’s counsel to participate in the process of home confinement revocation, going on to argue that the Bureau “should establish rules permitting retained counsel to participate in all stages of the revocation process and provide for the appointment of counsel for indigent people facing return to a correctional facility who do not have attorneys.”

One commentor offered the following regarding administrative or judicial review: “Confinees should be given the

⁴⁵ 18 U.S.C. 3621(a) (“A person who has been sentenced to a term of imprisonment . . . shall be

right to administrative or judicial review of a decision to reincarcerate. Such review would be unlikely to create a substantial administrative burden, as recent experience suggests—the Bureau, for example, acknowledged in the proposed rule that ‘violations of the conditions of home confinement requiring return have been rare during the pandemic emergency . . . and very few inmates placed in home confinement under the CARES Act have committed new crimes.’ 87 FR at 36,788. This experience suggests that few if any confinees will be subject to reincarceration in future emergencies.”

Department Response: As an initial matter, the Department notes inmates who violate the terms of home confinement, including CARES Act home confinement, are not necessarily returned to secure custody. BOP’s progressive discipline for home confinement violations mitigates an all-or-nothing approach, allowing BOP to only impose restrictions commensurate with the circumstances of the violation. Violations are examined based on severity and alongside any prior violations to determine how the terms of home confinement should be adjusted. Progressive discipline may begin with increased controls and checks, while allowing the inmate to remain in their home. For moderate violations, the inmate may be placed in a residential reentry center. Only serious or chronic violations will necessarily result in return to secure custody.

The Department further notes that the Bureau does have an established process by which those in CARES Act home confinement may contest the violation that prompted the decision to return the inmate to secure custody. It is called the Administrative Remedy Program. Whether the inmate is appealing increasingly strict conditions of confinement or a full return to secure custody, the Administrative Remedy Program provides a structured avenue of review and relief.

The Department also notes that Federal regulations and Bureau policy regarding the Administrative Remedy Program have always provided for the filing of a grievance and appeal by Bureau inmates in community custody.⁴⁹ The regulation, which refers to Community Corrections Centers (now known as Residential Reentry Centers), includes inmates in home confinement. Under the regulation, the “Community Corrections Manager” (the same

position as the current position of Residential Reentry Manager (RRM)) is responsible for the implementation and operation of the Administrative Remedy Program at the Community Corrections Center (CCC).⁵⁰ Like any other inmates monitored in community custody, inmates in home confinement need not first attempt informal resolution before filing a grievance.⁵¹ The timelines outlined in the Administrative Remedy Program apply to home confinement inmates, who are also entitled to file an appeal of an adverse disciplinary action.⁵² The RRM for the region in which the inmate is located must respond to the grievance or appeal within the timeframe outlined in the regulation.⁵³

The Department has maintained that placement in CARES Act home confinement does not create a constitutionally protected liberty interest.⁵⁴ We therefore decline to develop a separate administrative process by which inmates in CARES Act home confinement may challenge revocations, either by inclusion in this final rule or through a separate notice-and-comment rulemaking.

D. Comment in Opposition

The Department received only one comment in opposition to the proposed rule. The commentator concluded that the initial (January 2021) OLC opinion, which declared the Bureau would have been required to return all CARES Act home confinement inmates to secure custody at the expiration of the covered emergency period, was correct and represented the only tenable interpretation of the CARES Act. The commentator contended that, with the issuance of the second OLC opinion overruling the first one, the Department engaged in a results-oriented analysis employed in ignorance of the law and to appease criminal justice activists. The commentator noted that the proposal contemplated by the rule would lead to an absurd result because the Bureau would have 30 days after the end of the covered emergency period to move as many inmates as it wanted from secure custody to home confinement for the remainder of their sentences.

The commentator also said that the proposed rule ignores the changed

circumstances surrounding the pandemic and the “materially affect the functioning” requirement, which the commentator claimed is arguably no longer met by current circumstances. The commentator cited four considerations present now that were not present at the beginning of the pandemic: (1) the wide availability of both vaccines and tests; (2) the fact that studies focused on “crowding” in prisons during COVID–19 were conducted prior to the wide availability of vaccines to inmates; (3) the ability of inmates to intentionally refuse to receive the vaccine in order to make themselves more vulnerable to infection; and (4) the proposed rule’s disregard for the “materially affect” phrase by relying on speculation about new variants that could exist or spread in the future.

Department Response: Initially, for the reasons articulated in Sections II.C. and II.D. of the preamble to the proposed rule, the Department disagrees that it should revert to the reasoning of the January 2021 OLC opinion. Instead, the Department reaffirms its reliance on the analysis contained in the December 2021 OLC opinion. The Department also disagrees with the commentator’s contention that this rule would lead to the “absurd result[]” of BOP, during the 30 days after the national emergency ends, “release[ing] as many inmates as possible to home confinement and hav[ing] them stay there until the end of their sentences,” which would be “a scenario . . . not plausibly contained within the temporary authority that Congress granted to the Department” This concern is unwarranted. The BOP does not intend, nor does the Department intend to advise BOP, to move eligible inmates en masse to CARES Act home confinement in the 30 days following the ending of the national emergency.

Addressing the commentator’s argument that the rule ignores four changed circumstances: First, the Department does not dispute the public health value of widespread testing and readily available vaccines, but unfortunately, neither testing nor vaccination can guarantee that inmates, especially medically vulnerable ones, will not contract any of a number of variants of COVID–19 while incarcerated. While the risk of severe illness or death is lower for those who are fully vaccinated, risk remains, and there are also some inmates whose medical history and vaccination status make them more susceptible to infection or to experiencing severe symptoms. Moreover, the BOP does not require vaccination of inmates. The

⁵⁰ 28 CFR 542.11(a).

⁵¹ 28 CFR 542.13(b).

⁵² 28 CFR 542.14(a).

⁵³ 28 CFR 542.18.

⁵⁴ See, e.g., *Cardoza v. Pullen*, 3:22–CV–00591 (SVN), 2022 WL 3212408 (D. Conn. Aug. 9, 2022); *Frank v. Ramos*, No. 5:21–HC–02174–M, 2022 WL 1377950 (E.D.N.C. May 2, 2022); see also *Hatch v. Lappin*, 660 F. Supp. 2d 104 (D. Mass. 2009); cf. *Touizer v. Att’y Gen.*, No. 21–10761, 2021 WL 3829618 (11th Cir. Aug. 21, 2021).

⁴⁹ See 28 CFR 542.10(b) (noting the “Program applies to all inmates in institutions operated by the Bureau of Prisons, [and] to inmates designated to contract Community Corrections Centers (CCCs) under Bureau of Prisons responsibility”).

commentator also suggests mandatory testing of visitors to BOP institutions. This raises several concerns: the issues of what tests BOP would accept, and from what medical service providers; the fact that denying counsel entry for client visitation, either for refusal to test or unacceptable proof of negative status, creates serious due process concerns for the client, particularly in the time-sensitive pretrial context; to the extent that the commentator is suggesting that BOP itself administer tests to visitors, diverting critical medical staff devoted to inmate health care to administer and interpret these tests, and finally, the lack of space outside the secure perimeter to convert into makeshift testing and waiting areas at some institutions.

Second, studies published early in the pandemic about overcrowding and the spread of the virus within correctional institutions are no less compelling and relevant today in cautioning against recalling to secure custody those inmates who have been placed in home confinement.⁵⁵ Even with the availability of testing and vaccines, the Department maintains that a multifaceted approach to mitigating the spread of COVID-19 within the Federal prison population is the most effective way to protect vulnerable inmates.

Third, regarding the Department's justification for the rule based in part on inmates' right to refuse vaccination, the Department reiterates that inmates retain certain rights during incarceration, including a limited right to accept or reject medical treatment. Granting the BOP Director discretion to keep inmates in CARES Act home confinement allows for the flexibility needed to mitigate the spread of COVID-19.

Fourth, new variants and sub-variants have already become dominant in the community. The short- and long-term impacts of these variants—some of which have evolved to be increasingly effective at circumventing immunity acquired through vaccinations and infections—remain uncertain. Therefore, it is reasonable and prudent to prepare for the potential impact of a new COVID-19 variant on the Federal inmate population.

* * * * *

⁵⁵ While a vaccinated inmate population is “an extremely effective tool for the prevention of COVID-19 in prisons[.]” as of early last year, there have been “few studies evaluating COVID-19 in prisons and vaccination.” Massimiliano Esposito *et al.*, *The Risk of COVID-19 Infection in Prisons and Prevention Strategies: A Systematic Review and a New Strategic Protocol of Prevention*, 10 *Healthcare*, at 4, 10 (2022), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8872582/>.

The Department recognizes that there are other potential costs to inmates serving longer sentences in home confinement as a result of the CARES Act. For example, these inmates might lose the opportunity to participate in potentially beneficial programming and treatment offered only in BOP facilities, which they might have otherwise taken advantage of if in secure custody. In addition, most sentencing courts anticipated that offenders would be incarcerated in a secure facility, and there may be concern that placing inmates in home confinement for longer periods might not appropriately honor the intent of the courts, the interests of prosecuting United States Attorney's Offices, any impact on victims or witnesses, possible deterrence effects in the community, or other aspects of the Department's mission. These costs are all mitigated, however, by retaining the Director's discretion.

As the low percentage of inmates placed in CARES Act home confinement returned to secure custody shows, the Bureau can effectively manage public safety concerns associated with the low-risk inmates placed in home confinement under the CARES Act for longer periods of time. Indeed, of the nearly 5,000 inmates placed in home confinement under the CARES Act, as of January 16, 2023, only 515 had been returned to secure custody for any reason, and only 21 for committing a new crime. Individuals placed in home confinement under the CARES Act, like other inmates in home confinement, remain in the custody of the Bureau.

Before being placed in home confinement, inmates sign agreements that require consent to submit to home visits and drug and alcohol testing, acknowledgement of monitoring requirements, and an affirmation that they will not engage in criminal behavior or possess firearms. Under these agreements, individuals placed in home confinement are subject to electronic monitoring; check-in requirements; drug and alcohol testing; and transfer back to secure correctional facilities for any significant disciplinary infractions or violations of the agreement.⁵⁶ CARES Act inmates who remain in home confinement after the end of the covered emergency period would continue to be subject to these requirements until the end of their sentences, and possibly into a term of supervised release. Data show that these procedures have been working to

⁵⁶ See BOP, Program Statement 7320.01, Home Confinement (Sept. 6, 1995), as updated by Change Notice (Dec. 15, 2017), https://www.bop.gov/policy/progstat/7320_001_CN-2.pdf.

preserve public safety where inmates were placed on extended home confinement under the CARES Act, and the Department expects that such measures will continue to be effective after the end of the covered emergency period.⁵⁷ Thus, in the Department's interpretation and discretion, the aspects of a criminal sentence that preserve public safety can be managed in this context while also allowing individuals to more effectively prepare for life when their criminal sentences conclude.

III. Regulatory Certifications

A. Regulatory Flexibility Act

The Attorney General, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this rule and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

B. Executive Orders 12866 and 13563

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866 (Regulatory Planning and Review) and section 1(b) of Executive Order 13563 (Improving Regulation and Regulatory Review).

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute a “significant regulatory action” under section 3(f) of Executive Order 12866 because it may raise novel legal or policy issues arising out of implementation of section 12003(b)(2) of the CARES Act and, accordingly, it was reviewed by OMB.

The Department has assessed the costs and benefits of this rule as required by section 1(b)(6) of Executive Order 12866 and has made a reasoned determination that the benefits of this rule justify its costs.

⁵⁷ Previous research has similarly shown that inmates can maintain accountability in home confinement programs. See, e.g., Darren Gowen, *Overview of the Federal Home Confinement Program 1988–1996*, 64 *Fed. Prob.* 11, 17 (2000) (finding that 89 percent of 17,000 individuals placed in home confinement between 1988 and 1996 successfully completed their terms without incident). In addition, studies have found that efforts to decarcerate prisons in other contexts, which were not limited to home confinement measures, did not harm public safety. See, e.g., Jody Sundt *et al.*, *Is Downsizing Prisons Dangerous? The Effect of California's Realignment Act on Public Safety*, 15 *Criminology & Pub. Policy* 315 (2016).

The economic impact of this rule is limited to a specific subset of inmates who were placed in home confinement pursuant to the CARES Act and are not otherwise eligible for home confinement at the end of the covered emergency period. As of January 23, 2023, 3,434 inmates had been placed in home confinement under the CARES Act; 2,026 of those inmates had release dates in more than 12 months. The Department expects these numbers will continue to fluctuate as inmates serve their sentences and the Bureau conducts individualized assessments to make home confinement placements under the CARES Act for the duration of the covered emergency period.

The Bureau has realized significant cost savings by placing eligible inmates in home confinement under the CARES Act relative to housing those inmates in secure facilities, and it expects those cost savings to continue for inmates who remain in home confinement under the CARES Act following the end of the covered emergency period. Although the Bureau has not yet published the average COIF for FY 2021, in FY 2020 the average COIF for a Federal inmate in a Federal facility was \$120.59 per day.⁵⁸ The average cost for an inmate in home confinement was \$55.26 per day, representing a cost savings of approximately \$65.59 per day, per inmate, or approximately \$23,940.35 per year, per inmate. Although the numbers will likely differ for FY 2021 and beyond, the Department and the Bureau expect that the rule will benefit them as a result of the avoidance of costs the Bureau would otherwise expend to confine the affected inmates in secure custody. Because the affected inmates are currently serving their sentences in home confinement, there will be no new costs associated with this rulemaking.

As explained above, the rule will also have operational, penological, rehabilitative, public safety, and health benefits. These include increasing the Bureau's ability to control inmate populations in BOP facilities and in the community, allowing it to be responsive to changed circumstances; empowering the Bureau to make individualized assessments as to whether inmates placed in home confinement should remain in home confinement after the end of the covered emergency period, taking into account, for example, penological and rehabilitative goals and the public safety benefits associated with an inmate establishing family connections and finding employment

opportunities in the community; and allowing the Bureau to weigh the ongoing risk of new COVID-19 outbreaks in BOP facilities against the benefit of returning any inmate to secure custody.

The Department has determined there is no countervailing risk to the public safety that outweighs the benefits of this rule. The percentage of inmates placed in home confinement under the CARES Act that have had to be returned to secure custody for any violation of the rules of home confinement is very low; the number of inmates who were returned as a result of new criminal activity is a fraction of that. The vast majority of inmates in CARES Act home confinement have complied with the terms of the program and have been successfully serving their sentences in the community. Thus, in the Department's assessment, public safety considerations do not undercut the benefits associated with allowing inmates placed in home confinement under the CARES Act to remain in home confinement after the expiration of the covered emergency period.

Other potential costs relate to inmates serving longer sentences in home confinement as a result of the CARES Act. These inmates might lose the opportunity to participate in potentially beneficial programming and treatment offered only in BOP facilities, which they might have otherwise taken advantage of if in secure custody. In addition, most sentencing courts anticipated that offenders would be incarcerated in a secure facility, and there may be concern that placing inmates in home confinement for longer periods might not appropriately honor the intent of the courts, the interests of prosecuting United States Attorney's Offices,⁵⁹ any impact on victims or witnesses, possible deterrence effects in the community, or other aspects of the Department's mission. These costs are all mitigated, however, by retaining the Director's discretion to determine whether any inmate should be returned to secure custody based on an individualized assessment. The Department and the Bureau will consider the factors referenced in this paragraph when developing common criteria to govern these case-by-case assessments, thereby promoting operational efficiency.

⁵⁸ The Bureau, in its discretion, forwards certain home confinement cases to the prosecuting United States Attorney's Office for the input of prosecutors, taking any objections into account when approving or denying those cases.

D. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

E. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, the Attorney General determines that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

F. 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 (adjusted annually for inflation) in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

G. Congressional Review Act

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

H. Paperwork Reduction Act of 1995

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, National defense, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301, 18 U.S.C. 4001 and 28 U.S.C. 509, 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

■ 2. In § 0.96, add paragraph (u) to read as follows:

⁵⁸ Annual Determination of Average Cost of Incarceration Fee (COIF), 86 FR 49060, 49060 (Sept. 1, 2021).

§ 0.96 Delegations.

* * * * *

(u) With respect to the authorities granted under the Coronavirus Aid, Relief, and Economic Security (CARES) Act:

(1) During the “covered emergency period” as defined by the CARES Act, when the Attorney General determines that emergency conditions will materially affect the functioning of the Bureau of Prisons (Bureau), lengthening the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under 18 U.S.C. 3624(c)(2), as the Director determines appropriate.

(2) After the expiration of the “covered emergency period” as defined by the CARES Act, permitting any prisoner placed in home confinement under the CARES Act who is not yet otherwise eligible for home confinement under separate statutory authority to remain in home confinement under the CARES Act for the remainder of the prisoner’s sentence, as the Director determines appropriate, provided the prisoner is compliant with all conditions of supervision. In the event a prisoner violates the conditions of supervision, Bureau staff may return the prisoner to secure custody, or may utilize progressive discipline as outlined in the Residential Reentry Center (RRC) contract, which may include possible placement in an RRC or contract facility in lieu of direct return to secure custody.

(3) This paragraph (u) concerns only inmates placed in home confinement under the CARES Act. It has no effect on any other inmate, including those placed in home confinement under separate statutory authorities.

Dated: March 30, 2023.

Merrick B. Garland,

Attorney General.

[FR Doc. 2023–07063 Filed 4–3–23; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE TREASURY
Office of Foreign Assets Control
31 CFR Part 591
Publication of Venezuela Sanctions Regulations Web General Licenses 29, 30, 30A, 31, and 31A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury’s Office of Foreign Assets

Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 29, 30, 30A, 31, and 31A, each of which was previously made available on OFAC’s website.

DATES: GLs 29, 30, and 31 were issued on August 5, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT:

OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC’s website: www.treas.gov/ofac.

Background

On August 5, 2019, OFAC issued GL 29 to authorize certain transactions otherwise prohibited by Executive Orders (E.O.s) 13808 of August 24, 2017, “Imposing Additional Sanctions with Respect to the Situation in Venezuela” (82 FR 41155, August 29, 2017), and 13884 of August 5, 2019, “Blocking Property of the Government of Venezuela” (84 FR 38843, August 7, 2019). Also on August 5, 2019, OFAC issued GL 30 to authorize certain transactions otherwise prohibited by E.O. 13884. Also on August 5, 2019, OFAC issued GL 31 to authorize certain transactions otherwise prohibited by E.O.s 13850 of November 1, 2018, “Blocking Property of Additional Persons Contributing to the Situation in Venezuela” (83 FR 55243, November 2, 2018), and 13884.

On November 22, 2019, OFAC incorporated the prohibitions of E.O.s 13808, 13850, and 13884, as well as any other Executive orders issued pursuant to the national emergency declared in E.O. 13692 of March 8, 2015, “Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela,” into the Venezuela Sanctions Regulations, 31 CFR part 591 (VSR). Subsequently, OFAC issued one further iteration of GL 30 and two further iterations of GL: on February 2, 2021, OFAC issued GL 30A, which superseded GL 30 and authorized certain transactions otherwise prohibited by E.O. 13850 and E.O. 13884; on January 4, 2021, OFAC issued GL 31A, which superseded GL 31; and on January 9, 2023, OFAC issued GL 31B, which superseded GL 31A.

Each GL was made available on OFAC’s website (www.treas.gov/ofac) when it was issued. The text of GLs 29, 30, 30A, 31, and 31A is provided below. (GL 31B was published in a prior issue of the **Federal Register**.)

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13808 of August 24, 2017

Imposing Additional Sanctions With Respect to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 29

Certain Transactions Involving the Government of Venezuela in Support of Certain Nongovernmental Organizations’ Activities Authorized

(a) Except as provided in paragraph (c), all transactions involving the Government of Venezuela prohibited by Executive Order (E.O.) of August 5, 2019 or E.O. 13808, as amended by E.O. 13857 of January 25, 2019, that are ordinarily incident and necessary to the activities described in paragraph (b) by nongovernmental organizations are authorized, including processing and transfers of funds, and payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of Venezuela.

(b) The activities referenced in paragraph (a) are as follows:

(1) Activities to support humanitarian projects to meet basic human needs in Venezuela, including drought and flood relief, the provision of health services, assistance for vulnerable populations including individuals with disabilities and the elderly, environmental programs, and food, nutrition, and medicine distribution;

(2) Activities to support democracy building in Venezuela, including activities to support rule of law, citizen participation, government accountability, universal human rights and fundamental freedoms, access to information, and civil society development projects;

(3) Activities to support education in Venezuela, including combating illiteracy, increasing access to education, international exchanges, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting the Venezuelan people, including preventing infectious disease and promoting maternal/child health, sustainable agriculture, and clean water assistance; and

(5) Activities to support environmental protection in Venezuela, including the preservation and protection of threatened or endangered species and the remediation of pollution or other environmental damage.

(c) This general license does not authorize any transactions or dealings otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January

25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraph (a) of this general license.

Note to General License No. 29: Nothing in E.O. of August 5, 2019 prohibits transactions related to the provision of articles such as food, clothing, and medicine intended to be used to relieve human suffering. *See* Section 5 of E.O. of August 5, 2019. *See also* Venezuela-Related General License No. 4C (relating to exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, and software updates for medical devices).

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 30

Authorizing Certain Transactions Involving the Government of Venezuela Necessary to Port and Airport Operations

(a) Except as provided in paragraph (b) of this general license, all transactions and activities involving the Government of Venezuela prohibited by Executive Order (E.O.) of August 5, 2019 that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela are authorized.

(b) This general license does not authorize:

(1) Any transactions or dealings related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela; or

(2) Any transactions or dealings otherwise prohibited by E.O. of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraph (a) of this general license.

Note to General License No. 30: Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 30A

Authorizing Certain Transactions Necessary to Port and Airport Operations

(a) Except as provided in paragraph (c) of this general license, all transactions and

activities involving the Government of Venezuela prohibited by Executive Order (E.O.) 13884 of August 5, 2019, as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela are authorized.

(b) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by E.O. 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the VSR, involving the Instituto Nacional de los Espacios Acuáticos (INEA), or any entity in which INEA owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela are authorized.

(c) This general license does not authorize:

(1) Any transactions or activities related to the exportation or reexportation of diluents, directly or indirectly, to Venezuela; or

(2) Any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V, or any transactions or activities with any blocked person other than INEA, or any entity in which INEA owns, directly or indirectly, a 50 percent or greater interest, or any Government of Venezuela person that is blocked solely pursuant to E.O. 13884.

(d) Effective February 2, 2021, General License No. 30, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 30A.

Note to General License No. 30A: Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

Dated: February 2, 2021.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13850 of November 1, 2018

Blocking Property of Additional Persons Contributing to the Situation in Venezuela

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 31

Certain Transactions Involving the Venezuelan National Assembly, the Interim President of Venezuela, and Certain Other Persons Authorized

(a) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions prohibited by Executive Order (E.O.) of August 5, 2019 involving the following persons:

(1) The Venezuelan National Assembly, including its members and staff, and any persons appointed or designated by the National Assembly to act on behalf of the Government of Venezuela; and

(2) The Interim President of Venezuela, Juan Gerardo Guaidó Marquez (Guaidó), and

any official, designee, or representative appointed or designated by Guaidó to act on behalf of the Government of Venezuela, including the Special Attorney General, and any staff of the foregoing individuals; any ambassador or other representative to the United States or to a third country appointed by Guaidó, and any staff of such ambassador or representative; any representative to an international organization appointed by Guaidó, and any staff of such representative; any person appointed by Guaidó to the board of directors (including any ad hoc board of directors) or appointed as an executive officer of a Government of Venezuela entity (including entities owned or controlled, directly or indirectly, by the Government of Venezuela); and any other person that is appointed or designated by any of the foregoing persons to act on behalf of the Government of Venezuela.

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions involving any person appointed by Guaidó to the board of directors (including any ad hoc board of directors) or appointed as an executive officer of a Government of Venezuela entity (including entities owned or controlled, directly or indirectly, by the Government of Venezuela) prohibited by E.O. 13850, as amended by E.O. 13857 of January 25, 2019.

(c) This general license does not authorize:

(1) Any transaction that is otherwise prohibited under E.O. of August 5, 2019, or E.O. 13850, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraph (a) or persons appointed by Guaidó as described in paragraph (b) of this general license; or

(2) Any transaction involving the Venezuelan National Constituent Assembly convened by Nicolas Maduro, including its members and staff.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 31A

Certain Transactions Involving the IV Venezuelan National Assembly, the Interim President of Venezuela, and Certain Other Persons Authorized

(a) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions and activities prohibited by Executive Order (E.O.) 13884 of August 5, 2019, as incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), involving the following persons:

(1) The IV Venezuelan National Assembly seated on January 5, 2016 ("IV National Assembly") and its Delegated Commission,

including its respective members and staff, and any persons appointed or designated by the IV National Assembly or its Delegated Commission to act on behalf of the Government of Venezuela; and

(2) The current Interim President of Venezuela, Juan Gerardo Guaidó Marquez (Guaidó), and any official, designee, or representative appointed or designated by Guaidó to act on behalf of the Government of Venezuela, including the Special Attorney General, and any staff of the foregoing individuals; any ambassador or other representative to the United States or to a third country appointed by Guaidó, and any staff of such ambassador or representative; any representative to an international organization appointed by Guaidó, and any staff of such representative; any person appointed by Guaidó to the board of directors (including any ad hoc board of directors) or appointed as an executive officer of a Government of Venezuela entity (including entities owned or controlled, directly or indirectly, by the Government of Venezuela); and any other person that is appointed or designated by any of the foregoing persons to act on behalf of the Government of Venezuela.

(b) Except as provided in paragraph (c) of this general license, U.S. persons are authorized to engage in all transactions and activities involving any person appointed by Guaidó, the IV National Assembly, or its Delegated Commission to the board of directors (including any ad hoc board of directors) or appointed as an executive officer of a Government of Venezuela entity (including entities owned or controlled, directly or indirectly, by the Government of Venezuela) prohibited by E.O. 13850 of November 1, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the VSR.

(c) This general license does not authorize:

(1) Any transaction or activity involving the Venezuelan National Constituent Assembly convened by Nicolas Maduro or the illegitimate National Assembly scheduled to be seated on January 5, 2021, including their respective members and staff; or

(2) Any transactions or activities otherwise prohibited by the VSR, any other part of 31 CFR chapter V, or any transactions or activities with any blocked persons other than the Government of Venezuela persons identified in paragraph (a) or (b) of this general license.

(d) Effective January 4, 2021, General License No. 31, dated August 5, 2019, is replaced and superseded in its entirety by this General License No. 31A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: January 4, 2021.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2023-06970 Filed 4-3-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General Licenses 32, 33, 34, 34A, and 35

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued in the Venezuela Sanctions program: GLs 32, 33, 34, 34A, and 35, each of which was previously made available on OFAC's website.

DATES: GLs 32 and 33 were issued on August 5, 2019. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202-622-2480; Assistant Director for Regulatory Affairs, 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: www.treas.gov/ofac.

Background

On August 5, 2019, OFAC issued GLs 32 and 33 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 13884 of August 5, 2019, "Blocking Property of the Government of Venezuela" (84 FR 38843, August 7, 2019). On September 9, 2019, OFAC issued GL 34 to authorize certain transactions otherwise prohibited by E.O. 13884. Subsequently, OFAC issued one further iteration of GL 34: on November 5, 2019, OFAC issued GL 34A, which superseded GL 34. Also on November 5, 2019, OFAC issued GL 35 to authorize certain transactions otherwise prohibited by E.O. 13884.

Each GL was made available on OFAC's website (www.treas.gov/ofac) when it was issued. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 32

Authorizing Certain Transactions Related to Personal Maintenance of Individuals Who Are U.S. Persons Residing in Venezuela

(a) Except as provided in paragraph (b) of this general license, individuals who are U.S. persons residing in Venezuela are authorized to engage in transactions involving the Government of Venezuela prohibited by Executive Order (E.O.) of August 5, 2019 that are ordinarily incident and necessary to their personal maintenance within Venezuela, including payment of housing expenses, acquisition of goods or services for personal use, payment of taxes or fees, and purchase or receipt of permits, licenses, or public utility services.

(b) This general license does not authorize any transaction or dealing otherwise prohibited by E.O. of August 5, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraph (a) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 33

Authorizing Overflight Payments, Emergency Landings, and Air Ambulance Services

(a) Except as specified in paragraph (c), the receipt of, and payment of charges for, services rendered involving the Government of Venezuela in connection with overflights of Venezuela or emergency landings in Venezuela by aircraft registered in the United States or owned or controlled by, or chartered to, persons subject to U.S. jurisdiction are authorized.

(b) Except as specified in paragraph (c), persons subject to U.S. jurisdiction are authorized to engage in all

transactions involving the Government of Venezuela necessary to provide air ambulance and related medical services, including medical evacuation from Venezuela, for individuals in Venezuela.

(c) This general license does not authorize any transactions or dealings otherwise prohibited by Executive Order (E.O.) of August 5, 2019, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the Government of Venezuela persons described in paragraphs (a) and (b) of this general license.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: August 5, 2019

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 34

Authorizing Transactions Involving Certain Government of Venezuela Persons

(a) Except as provided in paragraph (c) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13884 involving one or more individuals who meet the definition of the “Government of Venezuela,” as defined in E.O. 13884, including all transactions that involve property in which such individuals have an interest, are authorized, provided that the individuals are one or more of the following:

- (1) United States citizens;
- (2) Permanent resident aliens of the United States;
- (3) Individuals in the United States who have a valid U.S. immigrant or nonimmigrant visa, other than individuals in the United States as part of Venezuela’s mission to the United Nations; or

(4) Former employees and contractors of the Government of Venezuela.

(b) Except as provided in paragraph (c), all transactions necessary to unblock property or interests in property that were blocked solely pursuant to E.O. 13884, including the return or processing of funds, for individuals described in paragraph (a) of this general license are authorized.

(c) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to E.O. 13884, or any part of 31 CFR chapter V, except as authorized by paragraph (a) or (b); or

(2) Any transactions or dealings otherwise prohibited by E.O. 13884, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person, including persons meeting the definition of the “Government of Venezuela” in E.O. 13884, other than the individuals described in paragraph (a) of this general license.

(d) U.S. persons unblocking property pursuant to paragraph (a) or (b) of this general license are required, within 10 business days from the date the property is unblocked, to file a report detailing the information required by 31 CFR 501.603(b)(3)(ii), with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman’s Bank Building, Washington, DC 20220, or via email to *OFACReport@treasury.gov*.

Andrea Gacki,

Director, Office of Foreign Assets Control.

Dated: September 9, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 34A

Authorizing Transactions Involving Certain Government of Venezuela Persons

(a) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by Executive Order (E.O.) 13884 involving one or more individuals who meet the definition of the “Government of Venezuela,” as defined in E.O. 13884, including all transactions that involve property in which such individuals have an interest, are authorized, provided that the individuals are one or more of the following:

- (1) United States citizens;
- (2) Permanent resident aliens of the United States;
- (3) Individuals who have a valid U.S. immigrant or nonimmigrant visa, other than individuals in the United States as

part of Venezuela’s mission to the United Nations;

(4) Former employees and contractors of the Government of Venezuela; or

(5) Current employees and contractors of the Government of Venezuela who provide health or education services in Venezuela, including at hospitals, schools, and universities.

(b) Except as provided in paragraph (d) of this general license, all transactions and activities prohibited by E.O. 13884 related to the receipt by an individual described in paragraph (a) of this general license of salary, pension, annuity, or other employment-related payments or benefits from a person meeting the definition of “Government of Venezuela” in E.O. 13884 and blocked solely pursuant to E.O. 13884 are authorized.

(c) Except as provided in paragraph (d), all transactions necessary to unblock property or interests in property that were blocked solely pursuant to E.O. 13884 for individuals described in paragraph (a) of this general license and transactions described in paragraph (b) of this general license, including the return or processing of funds, are authorized.

(d) This general license does not authorize:

(1) The unblocking of any property blocked pursuant to E.O. 13884, or any part of 31 CFR chapter V, except as authorized by paragraph (a), (b) or (c);

(2) Any transactions or dealings otherwise prohibited by E.O. 13884, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person, including persons meeting the definition of the “Government of Venezuela” in E.O. 13884, other than the individuals described in paragraph (a) of this general license, and the transactions described in paragraphs (b) and (c) of this general license; or

(3) Any transactions or dealings with, or the unblocking of any property or interests in property of, any person included on OFAC’s Specially Designated Nationals and Blocked Persons List (SDN List).

(e) U.S. persons unblocking property pursuant to paragraph (a), (b), or (c) of this general license are required, within 10 business days from the date the property is unblocked, to file a report detailing the information required by 31 CFR 501.603(b)(3)(ii), with the Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S.

Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, or via email to OFACReport@treasury.gov.

(f) Effective November 5, 2019, General License 34, dated September 9, 2019, is replaced and superseded in its entirety by this General License No. 34A.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: November 5, 2019.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 13884 of August 5, 2019

Blocking Property of the Government of Venezuela

GENERAL LICENSE NO. 35

Authorizing Certain Administrative Transactions With the Government of Venezuela

(a) Except as provided in paragraph (b) of this general license, U.S. persons are authorized to pay taxes, fees, and import duties to, and purchase or receive permits, licenses, registrations, certifications, and public utility services from, the Government of Venezuela, to the extent such transactions and activities are prohibited by Executive Order (E.O.) 13884, where such transactions are necessary and ordinarily incident to such persons' day-to-day operations.

(b) This general license does not authorize any transaction or dealing otherwise prohibited by E.O. 13884, or E.O. 13850 of November 1, 2018, E.O. 13835 of May 21, 2018, E.O. 13827 of March 19, 2018, E.O. 13808 of August 24, 2017, or E.O. 13692 of March 8, 2015, each as amended by E.O. 13857 of January 25, 2019, or any part of 31 CFR chapter V, or any transactions or dealings with any blocked person other than the transactions described in paragraph (a) of this general license.

(c) Except as provided in paragraph (d) of this general license, U.S. persons who make one or more payments authorized by this general license in U.S. dollars to the Government of Venezuela are required to file reports, as set forth in paragraph (e) of this general license, with the Office of Foreign Assets Control (OFAC) and the Department of State's Office of Sanctions Policy and Implementation. Such reports must include: the names and addresses of the entity or entities remitting payment and the Government of Venezuela entity or entities receiving payment; the amount of funds paid to the Government of Venezuela; the type

and scope of activities conducted, such as the relevant type of taxes, fees, or duties paid; and the dates of payment.

(d) U.S. financial institutions are not required to submit reports regarding any payments that they process on behalf of customers or other third parties that are authorized pursuant to this general license.

(e)(1) U.S. persons required to report to OFAC and the Department of State pursuant to paragraph (c) of this general license, must submit reports:

(i) By February 10, 2020, an initial report detailing all transactions and activities conducted pursuant to this general license from November 5, 2019 through February 3, 2020; and

(ii) (A) By August 10th of each year, detailing all transactions and activities conducted pursuant to this general license from January 1st through June 30th of the relevant year; and

(B) By February 10th of each subsequent year, detailing all transactions and activities conducted pursuant to this general license from July 1st through December 31st of the relevant year.

(2) Reports, which must reference General License 35, are to be sent to OFAC via email to OFACReport@treasury.gov or mailed to: Office of Foreign Assets Control, Office of Compliance and Enforcement, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220, and to the Department of State via email to GL35reporting@state.gov or mailed to: U.S. Department of State, 2201 C Street NW, WHA-AND HIST-4915 Washington, DC 20520.

Andrea Gacki,
Director, Office of Foreign Assets Control.

Dated: November 5, 2019.

Andrea M. Gacki,
Director, Office of Foreign Assets Control.
[FR Doc. 2023-06967 Filed 4-3-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD-2019-HA-0056]

RIN 0720-AB73

TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DoD is amending TRICARE reimbursement of ambulatory surgery centers (ASCs) and outpatient services provided in Cancer and Children's Hospitals (CCHs). These amendments are in accordance with the TRICARE statute that requires TRICARE's payment methodologies for institutional care be determined, to the extent practicable, in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under Medicare. In accordance with this requirement, TRICARE finalizes the adoption of Medicare's payment methodology for ASCs, and adoption of Medicare's payment methodology for outpatient services provided in CCHs as set forth in this final rule.

DATES: This rule is effective 180 October 1, 2023.

FOR FURTHER INFORMATION CONTACT: Jahanbakhsh Badshah, Defense Health Agency, 303-676-3881.

SUPPLEMENTARY INFORMATION:

I. Discussion of Public Comments and Changes

On Friday, November 29, 2019 (84 FR 65718-65727), the Department of Defense published a proposed rule titled "TRICARE; Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals" for a 60-day public comment period. Eleven public comments were received. This section responds to those public comments.

1. General Comments on Reimbursement, Access to Care, and Difference in Beneficiary Population for Ambulatory Surgery Centers (ASCs)

Comment: Several commenters expressed concern that this change in reimbursement methods and rates might lead to access to care issues because providers might opt out of providing services because the Medicare rate is lower than the previously paid TRICARE rates. One commenter urged the Defense Health Agency (DHA) to "take a more granular examination of changes in reimbursement that will occur as the result of the proposed alignment and take steps to ensure that any procedures that are being performed in significant volume in ASCs do not experience a reduction in reimbursement." Another commenter recommended that DHA should not adopt the Medicare ASC fee schedule (FS) because Medicare patients have different needs from those seen under TRICARE. The commenter requested DHA to consider differences in

procedure types performed on TRICARE patients, in part because this commenter found that their TRICARE patients “tend to undergo Orthopedic and ENT surgeries at a much higher rate than our Medicare patients do.”

Response: We appreciate the commenters’ concerns regarding the potential impact of adopting Medicare’s ASC FS in the TRICARE program. As discussed in the notice of proposed rulemaking, we are adopting the Medicare ASC system because, first, TRICARE is statutorily obligated to reimburse like Medicare where practicable, second, the current TRICARE ASC system is based primarily on Medicare’s retired ASC reimbursement system, and finally, the TRICARE rates are difficult to update and in some cases anomalous. The Medicare ASC rates, which TRICARE is adopting, are based on assessments made each year by the Centers for Medicare and Medicaid Services (CMS) of the appropriate level of reimbursement for ASCs. In contrast to adopting a system that CMS will update each year for the appropriate level of reimbursement for each ASC surgery, over one-half of the procedures under the current TRICARE ASC system have rates and groups based on assignments made prior to 2001. DHA has found that TRICARE’s current patchwork system can produce reimbursement anomalies, particularly in comparison to Medicare’s ASC rates and Outpatient Prospective Payment System (OPPS) rates. For example, we compared the January 2020 TRICARE ASC rates with Medicare ASC rates for 40 high-volume, higher-cost procedures and found that for one-fifth of the cases, the Medicare ASC rate is more than 40 percent higher than the current TRICARE ASC rate and that in only one quarter of the cases are the Medicare ASC rates within 10 percent of the TRICARE rates. In two cases, the TRICARE ASC rate is even greater than the OPPS rate, which is anomalous. These anomalies would be corrected using the Medicare ASC rates.

We agree with the commenter that it is important to look at the impact of proposed reimbursement changes for high-volume codes. DHA did this type of analysis prior to publishing the notice of proposed rulemaking and we have now used data from 2019 to examine the impact of reimbursement changes on high-volume ASC procedures as suggested by the commenter. We selected all TRICARE ASC procedures with 660 or more claims in the January-June 2019 period plus any other procedures that were among the highest 10 in terms of TRICARE ASC allowed amounts in 2019. The combined group

of 40 high-volume, high-cost surgical procedures accounted for over 71 percent of all TRICARE ASC surgery claims and 63 percent of all TRICARE ASC allowed amounts in the January-June 2019 period.

We found that the maximum allowable Medicare ASC rates in January 2020 were higher than the current TRICARE ASC rates for almost half (43 percent) of the 40 high-volume, high cost procedures, including 3 of the 6 highest-volume TRICARE ASC surgeries. We also found that the Medicare rates for an additional one-eighth of the 40 procedures had Medicare ASC rates that were only slightly less (0 to 9 percent) than the current TRICARE ASC rates. On average, the Medicare rates for the 40 high-volume, high-cost procedures were 14 percent lower than the January 2020 TRICARE ASC rates. Thus, we were reassured that for over half of the high-volume, high-cost procedures, the Medicare rates will represent either an increase or a small decrease compared with the TRICARE ASC rates.

We disagree with the commenter that DHA should ensure that *none* of the high-volume procedures experience a reduction in reimbursement rates. Even though there will be an overall reduction in TRICARE reimbursement rates, many codes will have higher rates and the benefits of adopting an updated, internally-consistent reimbursement system outweigh the disadvantages of reduced rates for some ASC surgeries. In addition, it is not practical for DHA to have TRICARE pay different amounts for procedures in ASCs compared to Medicare solely because a procedure is common.

We also disagree with the comment that Medicare ASC rates are not appropriate for TRICARE patients because the patients have different needs. First, the TRICARE population is generally younger and healthier on average than Medicare patients. Second, DHA has already adopted the use of the Medicare OPPS and the Medicare Physician Fee Schedule, with Medicare rates, and Medicare’s ASC FS rates are simply a hybrid of those two systems’ rates. Furthermore, many of the procedures that DHA has added to the TRICARE ASC FS in the last few years were priced based on the Medicare ASC FS rate. Fourth, there is nothing unique about freestanding ASCs that make Medicare rates inappropriate due to beneficiary characteristics compared to those payment systems. Fifth, we have no evidence that the Medicare ASC rates are too low because TRICARE beneficiaries generally do not require more costly care than Medicare

beneficiaries. Sixth, the fact that a procedure is more common in one population than another does not, in itself, argue for different payment rates because procedures are billed by specific Common Procedural Terminology (CPT) code. As the commenter suggested, we did examine the change in maximum reimbursement rates for ear nose and throat (audiology and respiratory) surgeries and orthopedic (musculoskeletal) surgeries. We found that almost one-quarter of the 40 high-volume, high-cost TRICARE surgical procedures are ENT or orthopedic and that the maximum TRICARE reimbursement rate would decrease by 6 percent for ENT surgeries and by 4 percent for orthopedic surgeries. In comparison, the rates would decrease by an average of 14 percent for all 40 surgeries. Thus, our analysis of the high-volume, high-cost procedures for TRICARE ASC patients indicates that although the mix of TRICARE and Medicare ASC surgeries is different, the types of surgeries identified by the commenter as being more common among the non-Medicare population will have modest reductions and smaller reductions than for other procedures. For all these reasons, DHA concludes that adopting the Medicare ASC rates is appropriate for TRICARE patients.

2. Non-Opioid Pain Management in ASCs

Comment: One commenter requested that DHA evaluate including non-opioid pain management medications in the list of covered ancillary services for ASC reimbursement, as Medicare did in 2019.

Response: DHA intends to adopt Medicare’s ASC FS rules, payment rates, and addenda, including their list of ancillary procedures allowed to be paid outside the packaged procedure rate (Addendum BB, ASC Covered Ancillary Services). Currently, as finalized in the CY 2021 OPPS/ASC final rule (86 FR 63484), Medicare has approved four such substances including Exparel (C9290; Injection, bupivacaine liposome, 1 mg), Omidria (J1097; Phenylephrine 10.16 mg/ml and ketorolac 2.88 mg/ml ophthalmic irrigation solution, 1 ml), Zynrelef (C9088; Instillation, bupivacaine and meloxicam, 1 mg/0.03 mg), and Xaracoll (C9089; Bupivacaine, collagen-matrix implant, 1 mg). These codes can be found in Addendum BB of the Medicare ASC FS rule files, with a payment rate given.

3. Annual Update Factor Used for ASCs

Comment: One commenter suggested that DHA should update the Medicare ASC rates for inflation using the hospital market basket update factor for CY 2023, not the CPI-U.

Response: We agree with the commenter that DHA should use the hospital market basket adjusted for productivity update factor for CY 2023, which aligns with Medicare and is practicable to adopt under the TRICARE program. The TRICARE updates will match the method that CMS uses each year to update the Medicare ASC rates. Therefore, we have revised the rule accordingly.

4. Beneficiary Copayment and Cost-Share Amounts for ASCs

Comment: One commenter indicated that the proposed rule did not describe cost-sharing for ASC care under the new reimbursement methodology.

Response: TRICARE's cost sharing structure varies by type of service (IP vs OP), type of beneficiary (active duty dependent versus retiree), and by type of enrollment (Prime vs. Select). The cost sharing for ASC care has been established by regulation and the cost sharing structure for ASC care will not be affected by TRICARE's adoption of the Medicare ASC rates. Most active duty family members in Prime pay no cost sharing for ASC care and those enrolled to Select generally pay \$25 per surgery. Most retirees and their family members in Prime pay \$67 per surgery (in 2022) and most Select enrollees pay 20 percent of the allowed amount for in-network ASC care and 25 percent of the allowed amount for out-of-network ASC care. Given that there will be a reduction in TRICARE allowed amounts under the Medicare ASC rates, most TRICARE retirees enrolled in Select will see reduced cost sharing, another benefit of adopting the new ASC system.

5. Maintain Current Exclusion of CCHs From OPSS

Comment: One commenter stated that the adoption of OPSS reimbursement for CCHs will have an undesirable financial impact on their Children's hospital and other Children's Hospitals that serve large TRICARE populations. Their concerns include that Medicare payments have been historically below cost, and that changes to the TRICARE fee structure, when combined with Medicare's rates, pose a significant threat to their ability to service military families. The suggestions ranged from continuing to reimburse Children's Hospitals at billed charges or "grandfathering" certain facilities that

are in close proximity to military bases that treat a disproportionate share of TRICARE beneficiaries.

Response: DHA agrees that some children's hospitals will have reduced TRICARE payments due to the rule's provisions although DHA's analysis also indicates that some children's hospitals will see large increases in their TRICARE payments.

The proposed rule contained a provision for a General Temporary Military Contingency Payment Adjustment (GTMCPA) which will allow children's hospitals and cancer hospitals that meet certain criteria to receive additional payments for services which will be paid under OPSS. The criteria will not be based on criteria similar to those specified under TRICARE's OPSS for GTMCPAs. These criteria, which have been tailored for CCHs, will include: (1) 10 percent or more of the hospital's revenue is from TRICARE for care of ADSMs/ADDs; (2) the hospital having 10,000 or more TRICARE visits that would fall under the OPSS payment system for ADSMs/ADDs annually; and (3) the hospital being deemed as essential for TRICARE operations. Hospitals that meet these criteria will be eligible to receive up to 115 percent of the hospital's costs for OPSS services. These provisions can be implemented for children's hospitals without jeopardizing access for TRICARE beneficiaries, because of the ability of children's hospitals to apply for a GTMCPA.

6. Transition Period for ASCs

Comment: Several commenters remarked that the lack of a transition period between the current TRICARE ASC reimbursement and the adoption of the Medicare rates may mean that there would be an immediate access to care effect, exacerbated by the abrupt change in fees. One commenter suggested a three year transition period, to allow ASCs time to adjust to the new rates. Another commenter suggested that without a transition, some beneficiaries would be forced to use higher-cost options, such as hospital outpatient departments, which would reduce DHA's expected savings from adopting the new ASC rates.

Response: DHA is adopting the new ASC reimbursement system to be consistent with Medicare's, as required by statute, which states that TRICARE institutional service payments shall be determined to the extent practicable in accordance with the same reimbursement rules as apply under Medicare. DHA has concluded that it is practicable for TRICARE to adopt Medicare's ASC rates. DHA is not

adopting the Medicare ASC rates in order to reduce TRICARE costs. DHA recognizes that there will be both increases and decreases in TRICARE maximum allowed amounts using the Medicare ASC rates. Although DHA expects a decrease in total TRICARE payments for ASCs, DHA also expects that these savings would be reduced if TRICARE beneficiaries increase their use of hospital outpatient departments (HOPDs).

As noted in the proposed rule, DHA considered a transition period but decided against one because the overall impact of the new system is small (for the 40 high-volume, high-cost procedures a reduction of 14 percent) and because there are many ASC procedures that will have rate increases under the new Medicare ASC system (over 40 percent of the high-volume surgeries). In addition, DHA has reviewed carefully Medicare Payment Advisory Committee (MedPAC's) most recent assessment of Medicare's ASC rates. The March 2022 MedPAC report to Congress found that there has been growth in the number of ASCs and that the number of Medicare beneficiaries using ASCs had increased from 2015 to 2019, which MedPAC states are both indicators of adequate access to ASCs. MedPAC also found in its March 2022 report that ASCs had adequate access to capital. As a result, MedPAC concluded that access to ASCs was adequate and that indicators of payment adequacy for ASCs were positive. Given that TRICARE will be adopting the Medicare ASC rates, DHA finds MedPAC's conclusions to be particularly relevant to issues of access and payment adequacy.

DHA also notes that even if some ASCs denied access to TRICARE beneficiaries for some surgeries, TRICARE beneficiaries would be largely protected from access problems because these patients could have their surgeries performed in HOPDs.

One commenter argued that a transition period would allow ASCs a chance to budget for the rate decreases and potential revenue loss. However, since rates will be decreased by a modest amount (14 percent for the 40 high-volume, high-cost surgeries) and because TRICARE beneficiaries are typically a small percentage of ASCs total revenue, as evidenced by the fact that 2019 TRICARE payments to ASCs (approximately \$250 M) were less than 5 percent of the 2019 Medicare payments to ASCs (\$5.2B), we have determined that a transition is not warranted. The TRICARE updates will match the method that CMS uses each year to update the Medicare ASC rates.

In addition, as noted above, the rates for almost half the high-volume ASC surgeries will increase under the Medicare ASC rates. A transition would mean that the full rate increases would not go into effect for a number of years.

7. Exemption of Common Procedural Terminology (CPT) Code 41899 for ASCs

Comment: Several commenters suggested that DHA should maintain CPT code 41899 (unlisted dentoalveolar structures) in the TRICARE ASC fee schedule, even though it is not payable under Medicare's ASC fee schedule. Commenters added that dental procedures are commonly performed on TRICARE beneficiaries and are needed for TRICARE's pediatric population with special needs, who may require anesthesia when undergoing dental procedures. One commenter expressed concerns that removing CPT code 41899 from the TRICARE ASC fee schedule will result in TRICARE beneficiaries losing access to this code, without providing any explanation.

Response: While DHA intends to adopt Medicare's ASC payment rules, to the extent practicable, we do recognize that in the case of dental care, an exception may be required, as Section 702 of the John Warner National Defense Authorization Act (NDAA) for Fiscal Year 2007 provides that, institutional and anesthesia services may be covered for both hospital and in-out surgery settings related to dental care for pediatric and certain other patients. Generally, Medicare does not pay for unlisted procedure codes in a freestanding ASC according to 42 CFR 416.166(c), because CMS must ensure that procedures allowed in an ASC are not a safety risk and that a patient would not typically be required to stay overnight or have active medical monitoring. However, we recognize that CPT 41899 is commonly utilized to bill for the facility fees associated with dental care for pediatric and certain other patients, who may require anesthesia during dental procedures. We agree that CPT 41899 is appropriate in an ASC setting and we have added this exception to the ASC list of covered surgical procedures, in accordance with Section 702 of NDAA for Fiscal Year 2007. For covered dental services as defined in § 199.4 of this part, this rule will permit reimbursement for the ASC facility fee for dental procedures that are excluded from Medicare's ASC list, such as CPT 41899 (including subsequent codes, if renumbered or renamed). The TRICARE payment for such covered dental procedures without an ASC rate would be based on the same rate under the TRICARE OPPTS. DHA

will not maintain a separate ASC list to accommodate this exception; instead the TRICARE contractors will be instructed to reimburse the procedure code at the OPPTS rate. This approach ensures access in freestanding facilities while implementing a practicable solution to accommodate the needs of our younger population.

II. Summary of Changes From Proposed Rule

In this final rule, after consideration of public comments, we are revising our proposed rule and adopting the method that CMS uses each year to update the Medicare ASC reimbursement rates to update the TRICARE ASC payment system, instead of specifying a specific method, such as consumer price index for all urban consumers (CPI-U). We are also revising the criteria for CCHs to apply for the GTMCPA. Clarifications have been made regarding DHA's intention to reimburse like Medicare, where practicable.

We are making changes to the ASC provider participation agreement, adding a new "hold harmless" provision under § 199.6(b)(4)(x)(B)(1)(ii) and (iii) that will prohibit ASC facilities from billing TRICARE beneficiaries for non-covered procedures, unless the beneficiary agreed in advance in writing to pay for the services. The advanced notice would inform TRICARE beneficiaries about potential costs prior to receiving services, which will protect beneficiaries from unintended liability. Incorporating the "hold harmless" provision is appropriate because providers have a responsibility of knowing whether specific services or items are covered, as required by § 199.6(a). Providers seeking authorized provider status and payment from the Federal Government through programs such as TRICARE have a responsibility to familiarize themselves with, and comply with program requirements. Therefore, the provider should be held financially responsible for failing to properly inform TRICARE beneficiaries about patient costs before services are rendered. While the ASC facility charges would be denied, the professional charges for the non-ASC procedure or service could potentially be reimbursed.

Corrections have been made to the regulations text at § 199.14(a)(6)(ii) to reflect the current version of the regulation, because the proposed rule used an older version. Therefore, we are only revising the current version of § 199.14(a)(6)(ii)(A) to specifically include CCHs as being added to the OPPTS controlled reimbursements, as they have been excluded to date; we are

revising § 199.14(a)(6)(ii)(E) to specifically exclude CCHs from the any Temporary Transitional Payment Adjustments (TTPAs) under § 199.14(a)(6)(ii)(E)(1) and (2); we are revising § 199.14(a)(6)(ii)(E)(3) to specifically name the additional available military contingency payment adjustment as a "general temporary military contingency payment adjustment (GTMCPA)" to further distinguish it from the TTPAs, and have added specific criteria for CCHs to qualify for GTMCPA; and, we are inserting a new § 199.14(a)(6)(ii)(E)(4) which provides CCHs with annual hold-harmless adjustments to OPPTS payments. Finally, we have permitted a limited exception to allow payment for covered dental care by revising § 199.14(d) to address how covered dental procedures will be reimbursed in the absence of a Medicare ASC payment rate. All other aspects of the proposed rule remained the same.

III. Executive Summary

A. Purpose of the Final Rule

The purpose of this rule is to finalize TRICARE regulation modifications necessary to implement for Ambulatory Surgery Centers (ASC) and Cancer and Children's Hospitals (CCHs) the statutory requirement that payments for TRICARE institutional services "shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under [Medicare]." Although Medicare's reimbursement methods for ASC and CCHs are different, it is prudent to finalize adopting both the Medicare ASC system and the Outpatient Prospective Payment System (OPPTS) with hold-harmless adjustments (meaning the provider is not reimbursed less than their costs) for CCHs simultaneously to align with our statutory requirement to reimburse like Medicare at the same time. This rule sets forth the regulatory modifications necessary to implement TRICARE reimbursement methodologies similar to those applicable to Medicare beneficiaries for outpatient services rendered in ASCs and cancer and children's hospitals.

1. TRICARE is adopting the Medicare reimbursement methodology for ASCs. Currently, TRICARE reimburses surgical services performed in TRICARE authorized ambulatory surgery settings (*i.e.*, freestanding ASCs and other TRICARE providers exempt from the TRICARE OPPTS reimbursement methodology including cancer and children's hospitals) institutional

facility costs on the basis of prospectively determined amounts, in accordance with 32 Code of Federal Regulations (CFR) 199.14(d). The current system was modeled after Medicare's previous ASC reimbursement system. TRICARE's current reimbursement system for services provided in these ambulatory surgery settings is based on Medicare's retired system, and is difficult to update. Adoption of Medicare's ASC reimbursement system will bring TRICARE reimbursement for ambulatory surgery care into alignment with the statutory requirement that payment methods for institutional care be, to the extent practicable, in accordance with the same reimbursement rules used by Medicare.

2. TRICARE is adopting the Medicare payment methodology for outpatient services provided in CCHs. In a final rule, published December 10, 2008, (73 FR 74945–74966), TRICARE adopted Medicare's payment methodology for outpatient hospital services—the Outpatient Prospective Payment System (OPPS). Under Medicare, CCHs were held harmless and were paid the full amount of the decrease they experienced (as prior to OPPS the hospital had been paid 100 percent of their costs) after the implementation of OPPS, under section 1833(t) (7) of the Social Security Act. These payments are transitional outpatient payments (TOPs). Because of the complexity and because of the administrative burden/expense of calculating and maintaining the TOPs, TRICARE opted to totally exempt CCHs from OPPS initially. The agency is now revisiting the exemption of CCHs from OPPS. In this final rule, TRICARE is adopting the Medicare methodology for reimbursement of outpatient facility services (including ambulatory surgery) rendered in a cancer or children's hospital, with modifications to address the administrative burden and complexity. The DHA now has the capability, and it is feasible, to adopt these reimbursement provisions with a modification that the hold-harmless provisions will be calculated and paid annually, rather than in monthly interim payments.

B. Summary of the Major Provisions of the Final Rule

1. *Adopting Medicare's Ambulatory Surgical Center Reimbursement System for TRICARE Authorized Ambulatory Surgery Centers.* Per Title 10 United States Code (U.S.C.), section 1079(i) (2), TRICARE's payment methods for institutional care shall be determined, to the extent practicable, in accordance

with the same reimbursement rules used by Medicare. Under this final rule, TRICARE will reimburse ASCs for ambulatory surgical services using a method similar to Medicare's ASC reimbursement methodology. Under the TRICARE ASC reimbursement method, payment for a TRICARE patient will be made at the lower of the billed charge or the Medicare-determined ASC payment rate with applicable TRICARE cost-sharing provisions. The TRICARE ASC reimbursement method would include payment for all facility services associated with the surgical procedure that are included in the payment methodology by Medicare, but would exclude certain services also excluded by Medicare under the ASC reimbursement methodology (e.g., certain ancillary services and implantable devices with pass-through status).

2. *Adopting Medicare's Outpatient Prospective Payment System (OPPS) for Cancer and Children's Hospitals.* In a final rule, dated December 10, 2008 (73 FR 74945–74966), TRICARE adopted Medicare's payment methodology for outpatient hospital services—the outpatient prospective payment system (OPPS). Under Medicare, CCHs were held harmless and were paid the full amount of the decrease they experienced after the implementation of OPPS, under section 1833(t) (7) of the Social Security Act. These payments are transitional outpatient payments (TOPs). Because of the complexity and because of the administrative burden/expense of calculating and maintaining the TOPs, TRICARE opted to totally exempt CCHs from the TRICARE OPPS reimbursement methodology initially.

Ten years after the implementation of OPPS, the agency is now revisiting the exemption of cancer and children's hospitals from OPPS. This final rule with comment period finalizes the adoption of the Medicare methodology for reimbursement of outpatient facility services rendered in a cancer or children's hospital, with modifications to address the administrative burden and complexity that initially led the agency to exclude these facilities from OPPS. DHA now has the capability, and it is feasible, to adopt Medicare's reimbursement provisions with two modifications: (1) that the hold-harmless provisions will be calculated annually, rather than in monthly interim payments; and (2) that the agency will use the hospital's cost-to-charge ratio (CCR) rather than the payment-to-cost ratio. With adoption of OPPS for cancer and children's hospitals, these institutions will no longer be considered TRICARE

ambulatory surgery sites for application of the TRICARE ASC reimbursement methodology.

3. *Transition Period.* When implementing the ASC fee schedule, Medicare included a four-year transition which blended the payment rates of the old methodology with the new for those procedures that were paid under both methods. We evaluated the feasibility of including a similar transition, where, the TRICARE-allowed amount would be 75 percent of the old rate and 25 percent of the new rate in year one; 50 percent of the old rate and 50 percent of the new rate in year two; and 25 percent of the old rate and 75 percent of the new rate in year three. In the fourth year the rate would be 100 percent of the new rate. However, many of the services reimbursed under TRICARE's current ASC reimbursement methodology have lower rates under Medicare, so providers would have to wait for higher reimbursements under the new system.

Therefore, we are finalizing a no transition period for the implementation of the ASC reimbursement system. Some providers may see substantial increases in reimbursement, and a transition period would not be beneficial for these providers. Additionally, because alternative locations are available for these services (e.g., Hospital Outpatient Departments), concerns regarding access to care are unfounded.

Similarly, we are finalizing no transition period for cancer and children's hospitals, with the rationale that providers will be held harmless under this reimbursement system. CCHs will receive, at a minimum, one hundred percent of their costs, or the OPPS payment, whichever is higher. Because many CCH providers will receive payment increases, a transition period would not be beneficial for them.

C. Costs and Benefits

Although this rule will be effective near fiscal year 2024, the overall economic impact of the rule is estimated based on an analysis of expected outcomes had the rule been implemented during calendar year (CY) 2021. Such analysis may be used to provide a reasonable estimate of future economic impact.

The economic impact of adopting Medicare's payment methodology for ASCs is anticipated to result in total cost-savings to the DoD of approximately \$10 million for CY 2021.

The economic impact of the proposal to adopt OPPS for CCHs, including the hold harmless provisions will be reduced payments to these providers of

approximately \$35 million per year if implemented in 2021.

We estimate that the effects of the provisions that would be implemented by this final rule would have an impact of increased cost-savings to the DoD of approximately \$45 million, offset by an estimate \$1.5 million in administrative costs to implement these changes.

II. Introduction and Background

1. TRICARE ASC PPS Reimbursement

A. Reimbursement

Medicare replaced their previous ASC system on January 1, 2008. Medicare's reimbursement system for ASCs uses OPPS relative payment rates as a guide. OPPS rates are reduced by a factor to account for the fact that ASCs have lower overhead costs than hospitals. In 2012, Medicare's ASC rates averaged 61 percent of the OPPS rates paid to acute care hospitals for surgical procedures. Under Medicare, ASCs are paid the lesser of the billed charge or the standard ASC reimbursement rate, a method which we are finalizing under the TRICARE program.

Under Medicare, the standard payment rate for ASC covered surgical procedures is calculated as the product of the ASC conversion factor and the ASC relative payment weight for each separately payable procedure or service. Payments are then geographically adjusted using wage-index values. Payments may also be adjusted for multiple surgical procedures or when surgical procedures are started and then discontinued.

Like Medicare, we are finalizing our approach to make a single payment to ASCs for covered procedures, which includes the facility services furnished in connection with the covered procedure (e.g., nursing services, certain drugs, surgical dressings, and administrative services). We are also finalizing our approach to separately reimburse for ancillary services that are integral to a covered service (e.g., drugs and biologicals that are separately paid under OPPS; radiology services that are separately paid under OPPS; brachytherapy services; implantable devices with OPPS pass-through status; and corneal tissue acquisition), similar to Medicare. The TRICARE ASC payment system will not reimburse for services of individual professional providers, Durable Medical Equipment (DME), non-implantable prosthetics, ambulance services, or independent laboratory services. These services will be reimbursed using other payment systems, which include the CMAC, Durable Medical Equipment Prosthetics Orthotics and Supplies (DMEPOS) Fee

Schedule and the Ambulance Fee Schedule. If there is no payment rate under the ASC reimbursement system for services that are medical in nature (such as office visits and diagnostic tests), the ASC will be reimbursed as though services were furnished in a physician's office utilizing the TRICARE CMAC methodology, with no additional payment for facility charges.

B. Definition and Requirements for Ambulatory Surgery Centers

This regulatory action finalizes a definition for ASCs, which will mirror Medicare's, with exceptions made for TRICARE's pediatric patients. Medicare defines an ASC as, "a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients"; in this action we are finalizing our proposal to adopt a definition at 32 CFR 199.2 that defines ASCs as those that meet the definition of an ASC under 42 CFR 416.2, including the requirement that they must participate in Medicare as ASCs per 42 CFR 416.25, with exceptions for ASCs that do not have an agreement with Medicare due to the specialty populations they serve. Medicare also requires the provider to have an agreement with CMS; we are finalizing as proposed that in lieu of separate certification by TRICARE, the ASC will simply provide evidence of a valid agreement with Medicare. While the terms of the agreement with Medicare will not apply to TRICARE, only those providers with an agreement with Medicare (or those providers that meet certain exceptions as noted below), are eligible for reimbursement for ambulatory surgery services provided in ASCs. We are finalizing our approach to accept Medicare's determination of a facility as an ASC. If the facility meets the definition of an ASC at 42 CFR 416.2 and has an agreement with Medicare as an ASC, they will be considered a TRICARE authorized ASC and subject to all requirements for authorized institutional provider status under 32 CFR 199.6. ASCs must also enter into a participation agreement with TRICARE, to ensure that the ASC accepts the TRICARE reimbursement rate, and meets all other conditions of coverage. Additionally, due to the differences between the TRICARE and Medicare populations, there may be ASCs that specifically serve pediatric populations. As such, these ASCs may not routinely enter into agreements with Medicare. Therefore, we are finalizing the proposal to allow certain pediatric ASCs without a valid Medicare participation agreement to be eligible for reimbursement under TRICARE's ASC

system, when such facilities are accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), or other accrediting body as authorized by the Director, DHA and published in the implementing instructions. Additionally, the ASC must enter into a participation agreement with TRICARE to receive reimbursement for covered services provided to TRICARE beneficiaries. This provision will not negatively affect access to care, as ambulatory surgery services are also available in hospital outpatient departments. The flexibility offered to pediatric specialty ASCs is sufficient to serve the unique needs of our patient population, while still ensuring the program complies with the requirements of 10 U.S.C. 1079(i). TRICARE-authorized pediatric ASCs will be subject to the same reimbursement system as finalized in this regulatory action.

Section 32 CFR 199.6(b)(4)(x)(B)(1) currently includes specific requirements for ambulatory surgery centers. With this regulatory action, we are changing the regulations text at § 199.6(b)(4)(x)(B)(1) to state that ASCs participating in Medicare meet all program requirements to be an authorized TRICARE provider. However, for ASCs that do not participate in Medicare (due to the specialized nature of the patients they treat, *i.e.*, pediatric patients) but are otherwise accredited by an accrediting body as approved by the Director, DHA, must continue to meet all the requirements stated. All ASCs must also enter into participation agreements with TRICARE.

C. Ambulatory Surgical Center Services List

Medicare identifies and maintains a list of surgical procedures that may be performed in an ASC. This list is updated at least annually by Medicare. The ASC list of covered procedures indicates those procedures which are covered and paid for if performed in the ASC setting. The ASC list is comprised of those surgical procedures that CMS has determined do not pose a significant safety risk and are not expected to require an overnight stay following the surgical procedure. Procedures on the Medicare Hospital Outpatient Prospective Payment System (HOPPS) inpatient-only list (42 CFR 419.22(n)) are not eligible for designation and coverage as ASC surgical procedures. Procedures that are reported utilizing unlisted category I Current Procedural Technology® codes are also excluded from the ASC list. TRICARE is adopting

the Medicare ASC List, in its entirety, including any updates made by Medicare to the list in the future, without any deviations (except for certain covered dental procedures) from the ASC List, as maintained and updated by CMS. No separate TRICARE ASC list would be maintained; the TRICARE program would rely upon CMS's determinations regarding those procedures determined to be appropriate in an ASC setting. The maintenance of a separate ASC List for TRICARE is unnecessary as adoption of Medicare's list is practicable, and maintenance of a separate list would be extremely complex for the agency and providers to review, maintain, and update. We invited comments on this approach, especially from facilities that specialize in care for young adult, pediatric, and other specialized populations not routinely covered by Medicare. We reviewed procedures that would commonly be performed on pediatric patients and found that these were generally included on the Medicare ASC list. These procedures included: adenoidectomy; myringotomy; nasal endoscopy; tonsillectomy; circumcision; inguinal and umbilical hernia repair; eye muscle repair; syndactyly repair; and hypospadias repair. Fowler-Stephens Orchiopexy is not listed on Medicare's ASC list, but is priced in OPPS.

If an ASC provides a surgical service not listed as covered on Medicare's ASC list, except for certain dental procedures, we are finalizing our proposal to deny the ASC facility charges, similar to Medicare. However, related professional services may be reimbursed utilizing TRICARE's allowable charge methodology. TRICARE finalizes the adoption of the Medicare requirement that facility charges may be reimbursed for only those services on the "ASC List." We are confident that there will be no access to care concerns with this approach, as surgical care continues to be available in hospital outpatient departments, and in inpatient settings, as appropriate. However, we are allowing an exception to this list for dental procedures covered under § 199.4 of this part, as Section 702 of the NDAA for Fiscal Year 2007 provides that, institutional and anesthesia services may be covered for both hospital and in-out surgery settings related to dental care for pediatric and certain other patients. In the case that a dental procedure is performed and the procedure is not listed as covered on Medicare's ASC list (e.g., CPT Code 41899), the TRICARE contractors may

make payment for that procedure at the OPPS rate. For example, CPT 41899 under OPPS is currently assigned to ambulatory payment classification (APC) 5161, which has a CY 2022 base-rate of \$216; therefore, TRICARE's payment in an ASC setting would also be \$216.

D. Services Included in the ASC Payment

We are finalizing as proposed that, like Medicare, the following items currently fall within the scope of ASC facility services. Future modifications made by Medicare to the services included in the ASC payment will be adopted by TRICARE in the implementing instructions. ASCs must incorporate charges for packaged services into the charges reported for the separately payable services with which they are provided to ensure appropriate payment.

Covered ASC facility services include:

- (1) Nursing, technician, and related services;
- (2) Use of the facility where the surgical procedures are performed;
- (3) Any laboratory testing performed under a Clinical Laboratory Improvement Amendments of 1988 (CLIA) certificate of waiver;
- (4) Drugs and biologicals for which separate payment is not allowed under the hospital outpatient prospective payment system (OPPS);
- (5) Medical and surgical supplies not on pass-through status under subpart G of 42 CFR part 419;
- (6) Equipment;
- (7) Surgical dressings;
- (8) Implanted prosthetic devices, including intraocular lenses (IOLs), and related accessories and supplies not on pass-through status under subpart G of 42 CFR part 419;
- (9) Implanted DME and related accessories and supplies not on pass-through status under subpart G of 42 CFR part 419;
- (10) Splints and casts and related devices;
- (11) Radiology services for which separate payment is not allowed under the OPPS, and other diagnostic tests or interpretive services that are integral to a surgical procedure;
- (12) Administrative, recordkeeping and housekeeping items and services;
- (13) Materials, including supplies and equipment for the administration and monitoring of anesthesia; and
- (14) Supervision of the services of an anesthesiologist by the operating surgeon.

CMS may make further changes and refinements to the items included within the ASC reimbursement system. TRICARE will adopt all future

modifications and refinements to this system made by CMS, unless found to be impracticable, as approved by the Director, DHA.

E. Covered Ancillary Items and Services

We are finalizing our approach to allow separate payment for covered ancillary items and services that are integral to a covered surgical procedure, consistent with Medicare. CMS defines these services at 42 CFR 416.61.

CMS may make further changes and refinements to the ancillary services that are paid separately within this reimbursement system. TRICARE will adopt all future modifications and refinements to this system made by CMS, unless found to be impracticable, as approved by the Director, DHA.

F. Surgical Dressings, Supplies, Splints, Casts, Appliances, and Equipment

We are finalizing our approach that the TRICARE payment for surgical dressings, supplies, splints, casts, appliances, and equipment (e.g., gowns, masks) will mirror Medicare's payment. Currently, these items are included in the payment for the surgical procedure. TRICARE will adopt all future modifications and refinements to the payment for these supplies and equipment provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

G. Drugs and Biologicals

ASC facility payment for a surgical procedure includes payment for drugs and biologicals that are usually not self-administered and that are considered to be packaged into the payment for the surgical procedure under OPPS. Similar to Medicare, we are finalizing our approach to allow separate payment to ASCs for drugs and biologicals that are furnished integral to an ASC covered surgical procedure and that are separately payable under OPPS, as defined by Medicare. TRICARE will adopt all future modifications and refinements to the payment for drugs and biologicals provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

H. Diagnostic and Therapeutic Items

Simple diagnostic tests that are generally included in facility charges may be considered facility services (e.g., urinalysis, hematocrit levels). Diagnostic tests performed by the ASC other than those generally included in the facility's charge are not covered by this reimbursement system. ASCs with laboratories certified as independent

laboratories under Medicare may bill for tests, or alternatively, the ASC may make arrangements with an independent laboratory or other laboratory to perform the diagnostic tests it requires prior to surgery. Payment for these diagnostic and therapeutic items will be made under the existing provisions of 32 CFR 199.14. TRICARE will adopt all future modifications and refinements to the payment for diagnostic and therapeutic items provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

I. Blood and Blood Products

We are finalizing our approach that these items will be considered a facility service and no separate reimbursement will be made, similar to Medicare. TRICARE will adopt all future modifications and refinements to the payment for these blood and blood products provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

J. Anesthesia

We are finalizing as proposed that anesthetic agents that are not paid separately under OPPS, as well as materials necessary for administration will be included in the facility payment. TRICARE will adopt all future modifications and refinements to the payment for anesthesia provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

K. Implantable Durable Medical Equipment

We are finalizing our approach that the payment for implantable DME will be included in the payment for the covered surgical procedure, with the exception of OPPS pass-through devices which are paid separately. TRICARE will adopt all future modifications and refinements to the payment for implanted DME provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

L. Intraocular Lenses (IOL) and New Technology IOLs (NTIOL)

This final rule finalizes the adoption of Medicare's payment provisions for IOLs and NTIOLs provided during or subsequent to cataract surgery in ASCs. As such, the payment for IOLs will be included in the ASC payment for the associated surgical procedure, except for NTIOLs designated by Medicare, and covered by TRICARE. NTIOLs may be subject to a payment adjustment, as determined by Medicare, and adopted

by TRICARE. TRICARE will adopt all future modifications and refinements to the payment for IOLs and NTIOLs provided in ASCs, as made by CMS, unless found to be impracticable, as approved by the Director, DHA.

M. Payment for ASC Facility Services

We are finalizing our approach to make a single payment to ASCs for covered procedures, which will include the facility services furnished in connection with the covered procedure (e.g., nursing services, certain drugs, surgical dressings, and administrative services), when the services are rendered by a provider described in the finalized definition of an ASC in 32 CFR 199.2. This payment will be the lower of the ASC payment rate or the billed charge. We are finalizing our approach to adopt the Medicare ASC payment rates, without making any TRICARE-specific adjustments or modifications to Medicare rates.

We are finalizing our approach to allow separate payment for ancillary services that are integral to a covered service (e.g., drugs and biologicals that are separately paid under OPPS; radiology services that are separately paid under OPPS; brachytherapy services; implantable devices with OPPS pass-through status; and corneal tissue acquisition). Like OPPS, payment under this system will not include reimbursement for services of individual professional providers, DME, non-implantable prosthetics, ambulance services, or independent laboratory services. These services will be reimbursed using other payment systems like the Medicare Physician Fee Schedule (similar to CHAMPUS Maximum Allowable Charges, or CMAC), DMEPOS Fee Schedule, and the Ambulance Fee Schedule.

We are also finalizing our proposal that covered ancillary services (including OPPS pass-through devices) that are contractor-priced under Medicare's ASC reimbursement system will be priced under TRICARE utilizing the allowable charge methodology for procedures paid outside of the OPPS under 32 CFR 199.14(j)(1).

Some items are paid the same amount in ASCs as they are paid under OPPS. These items include drugs and biologicals paid separately under OPPS when they are integral to covered surgical procedures and brachytherapy sources where prospective rates are available. Corneal tissue acquisition payment is based on acquisition cost or invoice.

The actual payment to ASCs requires a comparison between billed charges and the ASC payment rate for each

separately payable procedure and service. Reimbursement is based on the lower of the ASC payment rate or the billed charge. Ancillary services should be billed on the same claim as the related ASC procedure. Should Medicare modify this process in the future, TRICARE will adopt all modifications, unless deemed to be impracticable, as approved by the Director, DHA.

N. Wage Adjustments and Labor Share

We are finalizing as proposed that the labor related adjustments to the ASC payment rates will be based on Medicare's methodology, currently the Core-Based Statistical Area methodology. The adjustment for geographic wage variation will be made based on a 50 percent labor share, subject to change by CMS. There is no adjustment for geographic wage differences for: corneal tissue acquisition; drugs and devices with pass-through status under OPPS; brachytherapy sources; payment adjustment for NTIOLs; and separately payable drugs and biologicals. We are adopting this methodology, as well as any future refinements or adjustments made by Medicare to the labor-related share, the items and services subject to wage adjustments, and the methodology by which wage adjustments are made, unless determined to be impracticable by the Director, DHA.

O. Annual Adjustments

Since CY 2012, Medicare has applied an annual update to ASC payments based on the CPI-U reduced by the productivity adjustment. The proposed rule planned to adopt these annual updates. However, effective for CY 2019 through CY 2023, Medicare adopted the hospital market basket update reduced by the productivity adjustment to update ASC payments. DHA will adopt the update factors used in the Medicare ASC rates each year.

P. Payment for Terminated Procedures

This final rule with comment period finalizes the adoption of Medicare's payment provisions for terminated procedures, as well as the adoption of all future refinements and adjustments. Currently, this process is as follows:

1. Payment will be denied when an ASC submits a claim for a procedure that is terminated before the patient is taken into the treatment or operating room.

2. Payment will be made at 50 percent of the rate if a surgical procedure is terminated due to the onset of medical complications after the patient has been prepared for surgery and taken to the

operating room but before anesthesia has been induced or the procedure initiated.

3. Full payment will be made for a surgical procedure if a medical complication arises which causes the procedure to be terminated after anesthesia has been induced or the procedure initiated.

Q. Payment for Multiple Procedures

We are finalizing the adoption of Medicare's payment provisions for multiple procedures, as well as the adoption of all future refinements and adjustments. When multiple procedures are performed in the same operative session that are subject to the multiple procedure discount, 100 percent of the highest paying surgical procedure on the claim is paid, plus 50 percent of the applicable payment rates for the other ASC covered surgical services. In determining the ranking of the procedures for the discounting, the lower of the billed charge or the ASC payment amount will be used.

R. Offset for Payment for Pass-Through Devices

The ASC payment may be reduced for certain procedures when provided in conjunction with a specific pass-through device. We are finalizing our proposal to adopt this methodology, and accept the code pairs as assigned and updated by CMS, as well as any other future refinements or adjustments to this methodology.

S. Payment for Devices Furnished With No Cost or Full or Partial Credit

Reduced payments are made for certain procedures when a specified device is furnished without cost or for which either a partial or full credit is received (e.g., device recall). We are finalizing as proposed to adopt this methodology as well as any other future refinements or adjustments to this methodology.

T. Payment for Non-ASC Services

ASCs may furnish and be paid under alternate established reimbursement methodologies for services not considered ASC facility services. For example, ASCs may be reimbursed the CMAC rate for a physician office visit; facility charges are not allowed. If there is no ASC payment for services that are medical in nature (such as office visits and diagnostic tests), the ASC is reimbursed as though the service was performed in a physician's office, with no additional payment for facility charges. Surgical services that do not have an established reimbursement rate

under this system may not be reimbursed in an ASC setting.

U. Transitions

We are finalizing as proposed, no transition period, since many providers will see increases in payments under this reimbursement methodology.

V. ASC Quality Report Program and Value Based Purchasing

Medicare utilizes the ASC Quality Reporting program (ASCQR), under which ASCs must submit data on quality measures to receive the full payment update each year. ASCs that do not submit the required data have their payment update reduced by 2 percent. Performance on these measures does not impact ASC payments. For 2016, the measures included:

- ASC-1 Patient Burn
- ASC-2 Patient Fall
- ASC-3 Wrong Site, Wrong Side, Wrong Patient, Wrong Procedure, Wrong Implant
- ASC-4 Hospital Transfer/Admission
- ASC-5 Prophylactic Intravenous (IV) Antibiotic Timing
- ASC-6 Safe Surgery Checklist Use
- ASC-7 ASC Facility Volume Data on Selected ASC Surgical Procedures
- ASC-8 Influenza Vaccination Coverage among Healthcare Personnel

Medicare contracts with outside entities to collect this quality data. Because the TRICARE program represents a small fraction of the ASC services rendered as a whole, we are finalizing our proposal to provide the full ASC update to all ASCs, regardless of whether they report quality data. Collecting information regarding which ASCs report quality data and which do not, and building that information into the reimbursement system in a timely manner will be impracticable for the program. However, TRICARE may utilize this data, which is publicly reported at data.medicare.gov, for future initiatives related to reimbursement for ASCs. The ASCQR may lead to a value based purchasing (VBP) program for ASCs in the future; however, there were no specific proposals in Medicare's most recent ASC final rule (2016). TRICARE will adopt reimbursement modifications to the ASC reimbursement system related to VBP, if determined to be practicable by the Director, DHA. Such changes will be incorporated into the implementing instructions, as appropriate.

2. Adopt Medicare's Payment Methodology for Outpatient Services Provided in Cancer and Children's Hospitals

A. Reimbursement

This final rule implements the adoption of Medicare's reimbursement methodology for outpatient services rendered in cancer and children's hospitals, with modifications made due to the administrative complexity of the Medicare system, as well as finalizes a combined OPPS and cost-reimbursement system. We are finalizing as proposed to pay these hospitals under TRICARE's existing OPPS, and then reimburse the hospitals the higher of the OPPS payment or one hundred percent of the hospital-specific costs for those same services, based on the hospital-specific outpatient cost to charge ratio (CCR), through an annual adjustment. We are also finalizing as proposed to change the regulations text at § 32 CFR 199.14(a)(6) to include cancer and children's hospitals as providers subject to OPPS, and will further describe how these providers will be held harmless under the finalized methodology.

B. Hospitals Subject to This Proposed Reimbursement System

We are finalizing our proposal that cancer and children's hospitals that were specifically excluded in TRICARE's OPPS final rule at 73 FR 74945, and are currently held harmless from OPPS under Medicare, will be subject to the provisions of this final rule.

C. Transitional Outpatient Payments

While Medicare provides reimbursement through TOPs for the difference between OPPS and hospital-specific costs on a monthly basis, we are finalizing our approach to make these payments on an annual basis. This approach reduces the administrative complexity of the system and makes the system practicable to adopt for TRICARE's comparatively smaller beneficiary population. A precedent can be found in TRICARE's implementation of the reimbursement system for SCHs; the TRICARE contractors perform a year-end comparison of the primary methodology with the Diagnosis Related Group (DRG)-based payment methodology, and provide reimbursement where the DRG-based payment amount would have been higher than the primary methodology.

Additionally, Medicare holds CCHs harmless by calculating their pre-Balanced Budget Act (BBA) amount. The pre-BBA amount is an estimate of

what the provider would have been paid during the CY for the same services under the Medicare system that was in effect prior to OPSS. This amount is calculated by multiplying the provider's payment-to-cost ratio (PCR), based on the provider's base year cost report (generally CY 1996), times the reasonable costs the provider incurred during a calendar year to furnish the services that were paid under the OPSS. However, we are finalizing as proposed to simply hold the hospital harmless based on their costs; with costs defined as the product of multiplying the hospital's total charges for covered OPSS services for a twelve-month period by the hospital-specific outpatient CCR. This modification still holds the hospital harmless and ensures payment at costs, and is also practicable to adopt for TRICARE's comparatively smaller beneficiary population, and addresses issues of administrative complexity which led the agency to exempt CCHs in the original implementation of OPSS. Additionally, for cancer hospitals, Medicare has adopted an additional adjustment, mandated by the Patient Protection and Affordable Care Act (PPACA), which applied an additional payment adjustment to account for higher costs incurred by cancer hospitals. Because TRICARE is not subject to the PPACA and due to the administrative complexity of the calculation, we are not adopting this additional adjustment to adjust for the average payment-to-cost ratio for cancer hospitals.

For cancer and children's hospitals, we are finalizing the annual process as follows:

Step One: Identify the costs of the hospital by multiplying the total billed charges for OPSS services on claims paid during the 12-month period by the most-recent hospital-specific outpatient CCR.

Step Two: Add together total TRICARE payments, cost-shares, and deductibles applied for all Ambulatory Payment Classifications (APCs), as well as outlier payments and transitional pass-through payments for drugs, biologicals and/or devices for those same claims paid during the year as those in Step One. If the result of Step 2 is greater than Step 1, no payment is warranted because the hospital was reimbursed more from OPSS than their costs. If the result of Step 2 (OPSS payments) is less than Step 1 (hospital's costs), the hospital will be issued a payment equal to 100% of the difference between the hospital's costs and actual payments.

Adjustments may be made in subsequent years for claims not

processed to completion. The implementing instructions will contain the full instructions for calculation and payment of hold-harmless payments.

D. Transitions

We are finalizing as proposed, no transition period, as providers will be held harmless. Generally transitions are performed when providers may be exposed to payments that are below their costs; however, through the annual adjustments, providers are assured that they will receive reimbursements for their costs.

E. General Temporary Military Contingency Payment Adjustments (GTMCPA)

Under this system, at the discretion of the Director, DHA, CCHs may be eligible for GTMCPAs that will ensure network adequacy during military contingency operations, in accordance with the implementing instructions issued by the Director, DHA. These GTMCPAs will be issued in the same manner as those that are made currently under TRICARE's OPSS.

The criteria for applying for the GTMCPA, which have been tailored for CCHs, will include: (1) 10 percent or more of the hospital's revenue is from TRICARE for care of ADSMs/ADDs; (2) having 10,000 or more TRICARE visits that would fall under the OPSS payment system for ADSMs/ADDs annually; and (3) being deemed as essential for TRICARE operations. Hospitals that meet these criteria will be eligible to receive up to 115 percent of the hospital's costs for OPSS services.

III. Regulatory Analyses for ASCs, Cancer, and Children's Hospitals

Executive Order 12866 and Executive Order 13563

A. Overall Impact

DoD has examined the impacts of this final rule as required by Executive Orders 12866 (September 1993, Regulatory Planning and Review), 13563 (January 18, 2011, Improving Regulation and Regulatory Review); the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354); the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4); and the Congressional Review Act (5 U.S.C. 804(2)).

1. Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a "not significant" regulatory action, and not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

2. Congressional Review Act, 5 U.S.C. 801

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100 million or more or have certain other impacts. This final rule is not a major rule under the Congressional Review Act.

3. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. For purposes of the RFA, hospitals are considered to be small entities, either by being nonprofit organizations or by meeting the Small Business Administration (SBA) identification of a small business (having revenues of \$41.5 million or less in any one year). Likewise, the vast majority of ASCs are considered small businesses according to the SBA's size standards of having total revenues of \$16.5 million or less in any one year. For purposes of the RFA, we have determined that 70 percent of ASCs would be considered small entities according to the SBA size standards. We have also determined that 100 percent of CCHs would be considered small entities under the RFA definition because they qualify as a nonprofit organization or governmental jurisdiction, even though almost all have revenues above the \$41.5 million SBA size standard. Therefore, the Assistant Secretary of Defense for Health Affairs certifies this final rule would have a significant impact on a substantial number of small entities. The Regulatory Flexibility Analysis is included in the preamble of this rule.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. Currently, that threshold level is approximately \$140 million. This final rule will not mandate any requirements for State, local, or tribal governments or the private sector.

5. Paperwork Reduction Act

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3502–3511). Existing information collection requirements of the TRICARE and Medicare programs will be utilized. We do not anticipate any increased costs to hospitals because of paperwork, billing, or software requirements since we are adopting Medicare's methodologies with which the ASCs and hospitals are already familiar.

6. Executive Order 13132, "Federalism"

This rule has been examined for its impact under Executive Order 13132, and it does not contain policies that have federalism implications that would 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, consultation with State and local officials is not required.

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

It has been determined that this rule does not have a substantial effect on Indian tribal governments. This rule does not impose substantial direct compliance costs on one or more Indian tribes, preempt tribal law, or effect the distribution of power and responsibilities between the federal government and Indian tribes.

B. Entities Included in and Excluded From the Proposed Reimbursement Methodologies

The TRICARE ASC reimbursement system encompasses all ASCs that meet Medicare's definition of an ASC with a Medicare agreement, and those ASCs that due to the nature of the population they serve (*i.e.*, pediatric patients) do not have a Medicare agreement but are otherwise accredited by an accrediting body as approved by the Director, DHA. The TRICARE OPPOS reimbursement

system encompasses all Medicare-classified cancer and children's hospitals that are also authorized for TRICARE except for hospitals in States that are paid by Medicare and TRICARE under a waiver that exempts them from Medicare's or TRICARE's OPPOS, respectively. Currently, only Maryland hospitals operate under such a waiver.

C. Analysis of the Impact of Policy Changes on Payment for ASCs and CCHS, and Alternatives Considered

The alternatives that were considered, the changes that we are proposing, and the reasons that we have chosen these options are discussed below:

1. Alternatives Considered for the Reimbursement of ASCs

This final rule with comment period finalizes paying ASCs on the basis of the Medicare ASC fee schedule, with no exceptions to the list of procedures considered appropriate by Medicare to be performed in an ASC. This approach was adopted because TRICARE is statutorily obligated to pay like Medicare where practicable. Medicare covers approximately 3,400 procedures under the ASC payment system. The ASC list is comprised of those surgical procedures that CMS has determined do not pose a significant safety risk and are not expected to require an overnight stay following the surgical procedure. We anticipate no impact to access to care by adopting Medicare's approach.

We have also determined that no transition period is necessary. First, as we have noted earlier, historically transitions are done to protect providers from payments below their costs. However, in this case, while revenues would decrease for some providers, some providers may see increases in reimbursement, and a transition period would not be beneficial for these providers. Second, because alternative locations are available for these services (Hospital Outpatient Departments), concerns regarding access to care are unfounded. Third, TRICARE payments to ASCs will be equal to Medicare's. The Medicare Payment Advisory Committee (MedPAC) is an independent congressional agency which advises the U.S. Congress on issues affecting the Medicare program. MedPAC's "March 2022 Report To Congress: Medicare Payment Policy", indicates that available indicators of payment adequacy for ASC services are generally positive. Fourth, the number of outpatient surgeries performed in ASCs under TRICARE is very small in comparison to Medicare and the industry. If TRICARE had the Medicare reimbursement system in place during

CY 2019, TRICARE would have spent approximately \$250 million on ASC services. In contrast, ASCs received over \$5.2 billion in Medicare payments and beneficiaries' cost sharing in 2019. In aggregate, the TRICARE ASC claims are a very small percentage of the industry's claims, so the change to reimbursement in the aggregate, is small. Finally, the 2022 MedPAC report determined that there was sufficient access to ASCs by Medicare beneficiaries, as evidenced by the continued growth and expansion of ASCs. Given that TRICARE ASC rates will be equal to Medicare ASC rates, we do not anticipate access problems for TRICARE beneficiaries.

2. Alternatives Considered for the Reimbursement of Cancer and Children's Hospitals

Under the method discussed in this final rule, TRICARE's payments to CCHs would decrease by approximately \$35 million. Our analysis has shown that the expected impact on specific hospitals vary widely. Of the 35 CCHs with the highest allowed amounts in 2021, 14 hospitals would have their payments reduced by more than 15 percent, and six hospitals would have their payments increased by more than 15 percent. The median hospital in this group of 35 CCHs would have had its TRICARE reimbursement for the services covered by this rule reduced by two percent had the rule been implemented in 2021.

It is practicable to adopt OPPOS for these institutional providers, with annual hold harmless provisions.

We are also finalizing as proposed, no transition period. CCHs will receive, at a minimum, one hundred percent of their costs, or the OPPOS payment, whichever is higher. Historically, transitions are done to protect providers from payments below their costs. However, in this case, the providers will be held-harmless, so no transition is necessary.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS)

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

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Amend § 199.2 in paragraph (b) by adding in alphabetical order definitions

for “Ambulatory Surgery Center (ASC)”, “Cancer hospital”, and “Children’s hospital” to read as follows:

§ 199.2 Definitions.

* * * *

(b) * * *

Ambulatory Surgery Center (ASC).

Any distinct entity that is classified by the Centers for Medicare and Medicaid Services (CMS) as an Ambulatory Surgical Center (ASC) under 42 CFR part 416 and meets the applicable requirements established by § 199.6(b)(4)(x). Any ASC that would otherwise meet the CMS classification as an ASC but does not have a participation agreement with Medicare due to the nature of the patients they treat (e.g., pediatric) must meet the applicable requirements established by § 199.6(b)(4)(x) in order to be a TRICARE authorized ASC. All ASCs must also enter into participation agreements with TRICARE as required by § 199.6(b)(4)(x) in order to be an authorized TRICARE provider of ASC services. Additionally, ASCs are prohibited from billing TRICARE beneficiaries for procedures that are not included in Medicare’s ASC list of procedures allowable for facility fee payment in an ASC setting, unless the beneficiary agreed in advance in writing to pay for the non-covered services, in accordance with the “hold harmless” provision under § 199.6(b)(4)(x)(B)(1)(ii) and (iii).

* * * *

Cancer hospital. A specialty hospital that is classified by CMS as a Cancer Hospital as specified in 42 CFR 412.23 and meets the applicable requirements established by § 199.6(b)(4)(i).

* * * *

Children’s hospital. A specialty hospital that is classified by CMS as a Children’s Hospital as specified in 42 CFR 412.23 and meets the applicable requirements established by § 199.6(b)(4)(i).

* * * *

■ 3. Amend § 199.6 by revising paragraph (b)(4)(x)(B)(1) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * *

(b) * * *

(4) * * *

(x) * * *

(B) * * *

(1) Ambulatory surgical centers

(ASC). ASCs must meet all criteria for classification as an Ambulatory Surgical Center under 42 CFR part 416, as well as all of the requirements of this part, in order to be considered an authorized

ASC under the TRICARE program. Care provided by an authorized TRICARE ASC may be cost-shared under the following circumstances:

(i) A childbirth procedure provided by a CHAMPUS-approved ASC shall not be cost-shared by CHAMPUS unless the surgical center is also a CHAMPUS-approved birthing center institutional provider as established by the birthing center provider certification requirement of this part, and then reimbursement of covered maternity care and childbirth services shall be subject to § 199.14(e).

(ii) ASCs must demonstrate they have a valid participation agreement with Medicare, except as provided under paragraph (b)(4)(x)(B)(1)(i) of this section. In addition, in order to be considered an authorized TRICARE provider, ASCs must accept the requirements for a participating provider under paragraph (a)(13) of this section and must also enter into a participation agreement with TRICARE which includes a specific “hold harmless” provision under which the facility will agree not to bill the patient for services not on the Medicare ASC procedures list unless, the patient is advised in writing that the non-listed procedure is not covered by TRICARE and the patient agrees, in advance in writing, to be financially liable for the non-covered procedure.

(iii) ASCs that do not have an agreement with Medicare due to the nature of the patients they treat (e.g., pediatric patients) shall be accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, Inc. (AAAHC), or such other accreditation as authorized by the Director, DHA and published in the implementing instructions. Additionally, these facilities must enter into participation agreements with TRICARE, including the hold harmless provisions under paragraph (b)(4)(x)(B)(1)(ii) of this section, and accept the requirements for a participating provider under paragraph (a)(13) of this section in order to be an authorized TRICARE provider.

* * * *

■ 4. Section 199.14 is amended by revising paragraphs (a)(6)(ii)(A), (a)(6)(ii)(E) introductory text, and (a)(6)(ii)(E)(3), adding paragraph (a)(6)(ii)(E)(4), and revising paragraph (d) to read as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(6) * * *

(ii) * * *

(A) *General.* Outpatient services provided in hospitals subject to Medicare OPPS as specified in 42 CFR 413.65 and 42 CFR 419.20, to include cancer and children’s hospitals, will be paid in accordance with the provisions outlined in sections 1833t of the Social Security Act and its implementing Medicare regulation (42 CFR part 419) subject to exceptions as authorized by this paragraph (a)(6)(ii).

* * * *

(E) *Temporary transitional payment adjustments (TTPAs).* Temporary transitional payment adjustments will be in place for all hospitals, both network and non-network, except for cancer and children’s hospitals, in order to buffer the initial decline in payments upon implementation of TRICARE’s OPPS.

* * * *

(3) An additional general temporary military contingency payment adjustment (GTMCPA) will also be available at the discretion of the Director, or a designee, at any time after implementation to adopt, modify and/or extend temporary adjustments to OPPS payments for TRICARE network hospitals deemed essential for military readiness and deployment in time of contingency operations. Any GTMCPAs to OPPS payments shall be made only on the basis of a determination that it is impracticable to support military readiness or contingency operations by making OPPS payments in accordance with the same reimbursement rules implemented by Medicare. For cancer and children’s hospitals to qualify for the GTMCPA, they must meet the criteria in paragraphs (a)(6)(ii)(E)(3)(i) through (iii) of this section. Cancer and children’s hospitals that meet these criteria will be eligible to receive up to 115 percent of the hospital’s costs for OPPS services. The criteria for adopting, modifying, and/or extending deviations and/or adjustments to OPPS payments shall be issued through CHAMPUS policies, instructions, procedures and guidelines as deemed appropriate by the Director, or a designee. GTMCPAs may also be extended to non-network hospitals on a case-by-case basis for specific procedures where it is determined that the procedures cannot be obtained timely enough from a network hospital. For such case-by-case extensions, “Temporary” might be less than three years at the discretion of the Director, or designee. The GTMCPA qualification criteria for cancer and children’s hospitals follow:

(i) Have 10 percent or more of its revenue come from TRICARE for care of ADSMs and ADDs;

(ii) Have 10,000 or more of its TRICARE visits paid under the OPPTS for ADMSs and ADDs annually; and

(iii) Be deemed as essential for TRICARE operations.

(4) *For cancer and children's hospitals.* There are no temporary transitional payment adjustments in place. Reimbursement will be on the basis of OPPTS, however, payments shall be adjusted so that these providers receive 100 percent of their costs. Adjustments shall be made on an annual basis, and within 180 days of the end of the OPPTS year (OPPTS Year is defined as April 1 through March 30) DHA will calculate the hospital's costs, utilizing the hospital-specific outpatient cost-to-charge ratio (CCR). The costs shall be calculated by multiplying the hospital's billed charges for OPPTS services by the CCR. If the hospital's costs, as calculated by DHA, exceeded the payment that had been made under OPPTS, the hospital shall receive an annual payment adjustment so that the hospital receives 100% of their costs.

(d) *Payment of institutional facility costs for ambulatory surgery.* In general, TRICARE pays for institutional facility costs for ambulatory surgery on the basis of prospectively determined amounts, as provided in this paragraph, with the exception of ambulatory surgery procedures performed in hospital outpatient departments or CAHs, which are to be reimbursed in accordance with the provisions of paragraph (a)(6)(ii) or (iii) of this section. Surgical services provided in Ambulatory Surgery Centers (ASCs) as defined in § 199.2(b) will be paid in accordance with the provisions outlined in section 1833(t) of the Social Security Act and its implementing Medicare regulation (42 CFR part 416). TRICARE will recognize, to the extent practicable, in accordance with 10 U.S.C. 1079(i)(2), Medicare's ASC reimbursement methodology to include specific coding requirements, prospectively determined rates, discounts for multiple surgical procedures, the scope of ASC services, covered surgical procedures, and the basis of payment as described in 42 CFR part 416 with the exception that TRICARE will implement no transitional payments. Payments to ASCs for covered procedures and services will be based on the lesser of the billed charge or the ASC payment rate. Payment for ambulatory surgery procedures is limited to those procedures that are reimbursed by Medicare in ASCs, with the exception of dental procedures that are covered by the TRICARE program, as described in

§ 199.4. In the absence of a Medicare ASC fee schedule rate, the payment for a covered dental procedure in ASCs will be based on the same rate under TRICARE's OPPTS.

* * * * *

Dated: March 23, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023-06452 Filed 4-3-23; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2023-0225]

Special Local Regulations Northern California and Lake Tahoe Area Annual Marine Events; Blessing of the Fleet, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the annual Blessing of the Fleet Boat Parade on April 30, 2023, to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or loitering or anchoring in the regulated area, unless authorized by the designated Patrol Commander (PATCOM) or other Federal, State, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 100.1103 will be enforced for the location listed in Table 1 to § 100.1103, Item number 1 from 10 a.m. to noon on April 30, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415) 399-7440, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, Table 1 to § 100.1103, Item number 1 for the

Blessing of the Fleet regulated area from 10 a.m. to noon on April 30, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Blessing of the Fleet Boat Parade which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from surface to bottom, defined by a line drawn from Bluff Point on the southeastern side of the Tiburon Peninsula to Point Campbell on the northern edge of Angel Island, and a line drawn from Peninsula Point to the southern edge of the Tiburon Peninsula to Point Stuart on the western edge of Angel Island.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. During the enforcement period, if you are the operator of a vessel that participates in the marine event within the regulated area, you must follow the parade route established by the marine event sponsor, and comply with directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: March 22, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2023-06831 Filed 4-3-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100****[Docket No. USCG–2023–0224]****Special Local Regulations Northern California and Lake Tahoe Area Annual Marine Events; Opening Day on San Francisco Bay, San Francisco, CA****AGENCY:** Coast Guard, DHS.**ACTION:** Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the annual Opening Day on the San Francisco Bay Boat Parade on April 30, 2023 to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or loitering or anchoring in the regulated area, unless authorized by the designated Patrol Commander (PATCOM) or other Federal, State, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulations in 33 CFR 100.1103 will be enforced for the location in Table 1 to § 100.1103, Item number 2 from noon to 3 p.m. on April 30, 2023.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415) 399–7440, email SFWaterways@uscg.mil.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, Table 1 to § 100.1103, Item number 2 for the Opening Day on San Francisco Bay regulated area from noon to 3 p.m. on April 30, 2023. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Opening Day on San Francisco Bay Boat Parade which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from

surface to bottom, defined by a line drawn from Fort Point; thence easterly approximately 5,000 yards; thence easterly to the Blossom Rock Bell Buoy; thence westerly to the Northeast corner of Pier 39; thence returning along the shoreline to the point of origin.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. During the enforcement period, if you are the operator of a vessel that participates in the marine event within the regulated area, you must follow the parade route established by the marine event sponsor, be capable of maintaining an approximate speed of 6 knots, and comply with directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

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. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: March 22, 2023.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2023–06836 Filed 4–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100****[Docket Number USCG–2022–0927]****RIN 1625–AA08****Special Local Regulations; Sector Ohio Valley Annual and Recurring Special Local Regulations****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

SUMMARY: The Coast Guard is amending and updating its special local

regulations for recurring marine parades, regattas, and other events that take place in the Coast Guard Sector Ohio Valley area of responsibility (AOR). This rule informs the public of regularly scheduled events that require additional safety measures through the establishing of a special local regulation. Through this rulemaking the current list of recurring special local regulations is updated with revisions, additional events, and removal of events that no longer take place in Sector Ohio Valley's AOR. When these special local regulations are enforced, certain restrictions are placed on marine traffic in specified areas.

DATES: This rule is effective April 4, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2022–0927 in the search box and click “Search.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email call or email Petty Officer Brad Ponto, Sector Ohio Valley, U.S. Coast Guard, U.S. Coast Guard; telephone (502) 779–5336, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:**I. Table of Abbreviations**

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Captain of the Port Sector Ohio Valley (COTP) is establishing, amending, and updating its current list of recurring special local regulations codified under 33 CFR 100.801 in Table no. 1, for the COTP Ohio Valley zone.

On January 19th, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Sector Ohio Valley Annual and Recurring Special Local Regulations Update (86 FR 69602). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to those recurring regulated areas. During the comment period that ended February 21, 2023, no comments were received.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30

days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to ensure the safety of the events occurring in March.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Coast Guard is amending and updating the special local regulations under 33 CFR part 100 to include the most up to date list of recurring special local regulations for events held on or around navigable waters within the Sector Ohio Valley AOR. These events include marine parades, boat races, swim events, and others. The current list under 33 CFR 100.801 requires amending to provide new information on existing special local regulations, include new special local regulations expected to recur annually or biannually, and to remove special local regulations that are no longer required. Issuing individual regulations for each new special local regulation, amendment, or removal of an existing special local regulation creates unnecessary administrative costs and burdens. This rulemaking reduces administrative overhead and provides the public with notice through publication in the **Federal Register** of the upcoming recurring special local regulations.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 19, 2023. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM. This rule amends and updates part 100 of 33 CFR by revising the current table for Sector Ohio Valley, and by adding eight new recurring security zones, removing four security zones, and amending eleven security zones as described in the NPRM. Vessels intending to transit the designated waterway through the safety zone will only be allowed to transit the area when the COTP, or designated representative, has deemed it safe to do so or at the completion of the event.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

The Coast Guard expects the economic impact of this rule to be minimal, and therefore a full regulatory evaluation is unnecessary. This rule establishes special local regulations limiting access to certain areas under 33 CFR 100 within Sector Ohio Valley’s AOR. The effect of this rulemaking will not be significant because these special local regulations are limited in scope and duration. Deviation from the special local regulations established through this rulemaking may be requested from the appropriate COTP and requests will be considered on a case-by-case basis. Broadcast Notices to Mariners and Local Notices to Mariners will inform the community of these special local regulations so that they may plan accordingly for these short restrictions on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 00 comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in

understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human

environment. This rule involves the establishment of special local regulations related to marine event permits for marine parades, regattas, and other marine events. It is categorically excluded from further review under paragraph L(61) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. In § 100.801, Revise Table 1 to read as follows:

* * * * *

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS

Date	Event/sponsor	Ohio Valley location	Regulated area
1. 3 days—Second or third week-end in March.	Oak Ridge Rowing Association/ Cardinal Invitational.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
2. 1 day in March	Oak Ridge Rowing Association/ US Rowing U19 ID Camp.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
3. 1 day—Third weekend in March	Vanderbilt Rowing/Vanderbilt Invite.	Nashville, TN	Cumberland River, Mile 188.0–192.7 (Tennessee).
4. 2 days—Fourth weekend in March.	Oak Ridge Rowing Association/ Atomic City Turn and Burn.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
5. 3 days—One weekend in April ..	Big 10 Invitational Regatta	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
6. 1 day—One weekend in April	Lindamood Cup	Marietta, OH	Muskingum River, Mile 0.5–1.5 (Ohio).
7. 3 days—Third weekend in April	Oak Ridge Rowing Association/ SIRA Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
8. 2 days—Third or fourth Friday and Saturday in April.	Thunder Over Louisville	Louisville, KY	Ohio River, Mile 597.0–604.0 (Kentucky).
9. 1 day—During the last week of April or first week of May.	Great Steamboat Race	Louisville, KY	Ohio River, Mile 595.0–605.3 (Kentucky).
10. 3 days—Fourth weekend in April.	Oak Ridge Rowing Association/ Dogwood Junior Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
11. 1 day in May	Oak Ridge Rowing Association/ AAC Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
12. 3 days in May	Oak Ridge Rowing Association/ ARCA Championship.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
13. 3 Days in May	US Rowing Southeast Youth Championship Regatta.	Oak Ridge, TN	Clinch River, Mile 48.5–52 (Tennessee).
14. 3 days—Second weekend in May.	Vanderbilt Rowing/ACRA Henley	Nashville, TN	Cumberland River, Mile 188.0–194.0 (Tennessee).
15. 3 days—Second weekend in May.	Oak Ridge Rowing Association/ Big 12 Championships.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
16. 3 days—A weekend in May or June.	Oak Ridge Rowing Association/ Dogwood Masters.	Oak Ridge, TN	Clinch River, Mile 48.5–52.0 (Tennessee).
17. 1 day—Third weekend in May	World Triathlon Corporation/ IRONMAN 70.3.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
18. 1 day—During the last week-end in May or on Memorial Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–604.5 (Kentucky).
19. 1 day—The last week in May ..	Chickamauga Dam Swim	Chattanooga, TN	Tennessee River, Mile 470.0–473.0 (Tennessee).
20. 2 days—Last weekend in May or first weekend in June.	Visit Knoxville/Racing on the Tennessee.	Knoxville, TN	Tennessee River, Mile 647.0–648.0 (Tennessee).
21. 2 days—Last weekend in May or one weekend in June.	Outdoor Chattanooga/Chattanooga Swim Festival.	Chattanooga, TN	Tennessee River, Mile 454.0–468.0 (Tennessee).
22. 2 days—First weekend of June	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
23. 1 day—First weekend in June	Visit Knoxville/Knoxville Powerboat Classic.	Knoxville, TN	Tennessee River, Mile 646.4–649.0 (Tennessee).
24. 3 days—One of the last three weekends in June.	Lawrenceburg Regatta/Whiskey City Regatta.	Lawrenceburg, IN	Ohio River, Mile 491.0–497.0 (Indiana).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
25. 3 days—One of the last three weekends in June.	Hadi Shrine/Evansville Shriners Festival.	Evansville, IN	Ohio River, Mile 790.0–796.0 (Indiana).
26. 3 days—Third weekend in June.	TM Thunder LLC/Thunder on the Cumberland.	Nashville, TN	Cumberland River, Mile 189.6–192.3 (Tennessee).
27. 1 day—Third or fourth weekend in June.	Greater Morgantown Convention and Visitors Bureau/Mountaineer Triathlon.	Morgantown, WV	Monongahela River, Mile 101.0–102.0 (West Virginia).
28. 1 day—Fourth weekend in June.	Team Magic/Chattanooga Waterfront Triathlon.	Chattanooga, TN	Tennessee River, Mile 462.7–466.0 (Tennessee).
29. 3 days in June	Lake Guntersville Hydrofest	Guntersville, AL	Tennessee River 355.5–365.5 (Alabama).
30. 1 day in June	Music City Triathlon	Nashville, TN	Cumberland River, Mile 189.7–192.3 (Tennessee).
31. 3 days—The last weekend in June or one of the first two weekends in July.	Madison Regatta	Madison, IN	Ohio River, Mile 554.0–561.0 (Indiana).
32. 1 Day in July	Three Rivers Regatta	Knoxville, TN	Tennessee River, Mile 642–653 (Tennessee).
33. 1 Day in July	Tri-Louisville	Louisville, KY	Ohio River, Mile 600.5–604.0 (Kentucky).
34. 1 Day in July	PADL	Cannelton, IN	Ohio River, Miles 719.0–727.0 (Kentucky).
35. 1 day—First week in July	Cincinnati Parks-Sawyer Point/Cincinnati Parks Board.	Cincinnati, OH	Ohio River, Miles 469–470 (Ohio).
36. 1 day—First week in July	City of New Richmond, Riverdays/VFW.	New Richmond, OH	Ohio River, Mile 449.5–450.5 (Ohio).
37. 1 day—During the first week of July.	Evansville Freedom Celebration/4th of July Freedom Celebration.	Evansville, IN	Ohio River, Mile 790.0–797.0 (Indiana).
38. First weekend in July	Eddyville Creek Marina/Thunder Over Eddy Bay.	Eddyville, KY	Cumberland River, Mile 46.0–47.0 (Kentucky).
39. 2 days—One of the first two weekends in July.	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
40. 1 day—Second weekend in July.	Bradley Dean/Renaissance Man Triathlon.	Florence, AL	Tennessee River, Mile 254.0–258.0 (Alabama).
41. 2 days—Second weekend in July.	New Martinsville Vintage Regatta	New Martinsville, WV	Ohio River Mile 127.5–128.5 (West Virginia).
42. 1 day—Third or fourth Sunday of July.	Tucson Racing/Cincinnati Triathlon.	Cincinnati, OH	Ohio River, Mile 468.3–471.2 (Ohio).
43. 2 days—One of the last three weekends in July.	Dare to Care/KFC Mayor's Cup Paddle Sports Races/Voyageur Canoe World Championships.	Louisville, KY	Ohio River, Mile 600.0–605.0 (Kentucky).
44. 2 days—Last two weeks in July or first three weeks of August.	Friends of the Riverfront Inc./Pittsburgh Triathlon and Adventure Races.	Pittsburgh, PA	Allegheny River, Mile 0.0–1.5 (Pennsylvania).
45. 1 day—Last weekend in July ..	Maysville Paddlefest	Maysville, KY	Ohio River, Mile 408–409 (Kentucky).
46. 2 days—One weekend in July	Marietta Riverfront Roar Regatta	Marietta, OH	Ohio River, Mile 171.6–172.6 (Ohio).
47. 1 day in August	Three Rivers Regatta	Knoxville, TN	Tennessee River 652–653 (Tennessee).
48. 1 day in August	K-Town On The River	Knoxville, TN	Tennessee River 648–650 (Tennessee).
49. 3 days in August	Pro Watercross Music City Grand Prix.	Nashville, TN	Cumberland River 190–191 (Tennessee).
50. 1 day—first Sunday in August	Above the Fold Events/Riverbluff Triathlon.	Ashland City, TN	Cumberland River, Mile 157.0–159.5 (Tennessee).
51. 3 days—First week of August	EQT Pittsburgh Three Rivers Regatta.	Pittsburgh, PA	Allegheny River mile 0.0–1.0, Ohio River mile 0.0–0.8, Monongahela River mile 0.5 (Pennsylvania).
52. 2 days—First weekend of August.	Thunder on the Bay/KDBA	Pisgah Bay, KY	Tennessee River, Mile 30.0 (Kentucky).
53. 1 day in August	Riverbluff Triathlon	Ashland City, TN	Cumberland River, Mile 157.0–159.0 (Tennessee).
54. 1 day—One of the first two weekends in August.	Green Umbrella/Ohio River Paddlefest.	Cincinnati, OH	Ohio River, Mile 458.5–476.4 (Ohio and Kentucky).
55. 2 days—Third full weekend (Saturday and Sunday) in August.	Ohio County Tourism/Rising Sun Boat Races.	Rising Sun, IN	Ohio River, Mile 504.0–508.0 (Indiana and Kentucky).
56. 3 days—Second or Third weekend in August.	Kittanning Riverbration Boat Races.	Kittanning, PA	Allegheny River mile 42.0–46.0 (Pennsylvania).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
57. 3 days—One of the last two weekends in August.	Thunder on the Green	Livermore, KY	Green River, Mile 69.0–72.5 (Kentucky).
58. 1 day—Fourth weekend in August.	Team Rocket Tri-Club/Rocketman Triathlon.	Huntsville, AL	Tennessee River, Mile 332.2–335.5 (Alabama).
59. 1 day—Last weekend in August.	Tennessee Clean Water Network/ Downtown Dragon Boat Races.	Knoxville, TN	Tennessee River, Mile 646.3–648.7 (Tennessee).
60. 2 days—One weekend in August.	POWERBOAT NATIONALS—Ravenswood Regatta.	Ravenswood, WV	Ohio River, Mile 220.5–221.5 (West Virginia).
61. 2 days—One weekend in August.	Powerboat Nationals—Parkersburg Regatta/Parkersburg Homecoming.	Parkersburg, WV	Ohio River Mile 183.5–285.5 (West Virginia).
62. 3 days—One weekend in August.	Grand Prix of Louisville	Louisville, KY	Ohio River, Mile 601.0–605.0 (Kentucky).
63. 3 days—One weekend in August.	Evansville HydroFest	Evansville, IN	Ohio River, Mile 790.5–794.0 (Indiana).
64. 3 days—One weekend in the month of August.	Owensboro HydroFair	Owensboro, KY	Ohio River, Mile 794.0–760.0 (Kentucky).
65. 1 day—First or second weekend of September.	SUP3Rivers The Southside Outside.	Pittsburgh, PA	Monongahela River mile 0.0–3.09 Allegheny River mile 0.0–0.6 (Pennsylvania).
66. 1 day—First weekend in September or on Labor Day.	Mayor's Hike, Bike and Paddle	Louisville, KY	Ohio River, Mile 601.0–610.0 (Kentucky).
67. 2 days—Sunday before Labor Day and Labor Day.	Cincinnati Bell, WEBN, and Proctor and Gamble/Riverfest.	Cincinnati, OH	Ohio River, Mile 463.0–477.0 (Kentucky and Ohio) and Licking River Mile 0.0–3.0 (Kentucky).
68. 2 days—Labor Day weekend ..	Wheeling Vintage Race Boat Association Ohio/Wheeling Vintage Regatta.	Wheeling, WV	Ohio River, Mile 90.4–91.5 (West Virginia).
69. 3 days—The weekend of Labor Day.	Portsmouth River Days	Portsmouth, OH	Ohio River, Mile 355.5–356.8 (Ohio).
70. 2 days—One of the first three weekends in September.	Louisville Dragon Boat Festival	Louisville, KY	Ohio River, Mile 602.0–604.5 (Kentucky).
71. 2 days—One of the first three weekends in September.	State Dock/Cumberland Poker Run.	Jamestown, KY	Lake Cumberland (Kentucky).
72. 3 days—One of the first three weekends in September.	Fleur de Lis Regatta	Louisville, KY	Ohio River, Mile 594.0–598.0 (Kentucky).
73. 1 day—Second weekend in September.	City of Clarksville/Clarksville Riverfest Cardboard Boat Regatta.	Clarksville, TN	Cumberland River, Mile 125.0–126.0 (Tennessee).
74. 1 day—One Sunday in September.	Ohio River Sternwheel Festival Committee Sternwheel race reenactment.	Marietta, OH	Ohio River, Mile 170.5–172.5 (Ohio).
75. 1 Day—One weekend in September.	Parkersburg Paddle Fest	Parkersburg, WV	Ohio River, Mile 184.3–188 (West Virginia).
76. 2 days—One of the last three weekends in September.	Madison Vintage Thunder	Madison, IN	Ohio River, Mile 556.5–559.5 (Indiana).
77. 1 day—Third Sunday in September.	Team Rocket Tri Club/Swim Hobbs Island.	Huntsville, AL	Tennessee River, Mile 332.3–338.0 (Alabama).
78. 1 day—Fourth or fifth weekend in September.	Knoxville Open Water Swimmers/ Bridges to Bluffs.	Knoxville, TN	Tennessee River, Mile 641.0–648.0 (Tennessee).
79. 1 day—Fourth or fifth Sunday in September.	Green Umbrella/Great Ohio River Swim.	Cincinnati, OH	Ohio River, Mile 468.8–471.2 (Ohio and Kentucky).
80. 1 day—One of the last two weekends in September.	Ohio River Open Water Swim	Prospect, KY	Ohio River, Mile 587.0–591.0 (Kentucky).
81. 2 days—One of the last three weekends in September or the first weekend in October.	Captain Quarters Regatta	Louisville, KY	Ohio River, Mile 594.0–598.0 (Kentucky).
82. 3 days—One of the last three weekends in September or one of the first two weekends in October.	Owensboro Air Show	Owensboro, KY	Ohio River, Mile 754.0–760.0 (Kentucky).
83. 1 day—Last weekend in September.	World Triathlon Corporation/ IRONMAN Chattanooga.	Chattanooga, TN	Tennessee River, Mile 462.7–467.5 (Tennessee).
84. 3 days—Last weekend of September and/or first weekend in October.	New Martinsville Records and Regatta Challenge Committee.	New Martinsville, WV	Ohio River, Mile 128–129 (West Virginia).
85. 2 days—First weekend of October.	Three Rivers Rowing Association/ Head of the Ohio Regatta.	Pittsburgh, PA	Allegheny River mile 0.0–5.0 (Pennsylvania).
86. 1 day in October	Chattajack	Chattanooga, TN	Tennessee River, Miles 462.7–465.5 (Tennessee).

TABLE 1 TO § 100.801—SECTOR OHIO VALLEY ANNUAL AND RECURRING MARINE EVENTS—Continued

Date	Event/sponsor	Ohio Valley location	Regulated area
87. 1 day in October	Cumberland River Compact/Cumberland River Dragon Boat Festival.	Nashville, TN	Cumberland River, Mile 189.7–192.1 (Tennessee).
88. 1 day in October	Outdoor Chattanooga/Swim the Suck.	Chattanooga, TN	Tennessee River, Miles 452.0–454.5 (Tennessee).
89. 1 day—First or second weekend in October.	Lookout Rowing Club/Chattanooga Head Race.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
90. 1 day in October	Shoals Scholar Dollar	Florence, AL	Tennessee River 255–257 (Alabama).
91. 2 days in October	Music City Head Race	Nashville, TN	Cumberland River 190–195 (Tennessee).
92. 2 days—First or second week of October.	Head of the Ohio Rowing Race ...	Pittsburgh, PA	Allegheny River, Mile 0.0–3.0 (Pennsylvania).
93. 2 days—One of the first three weekends in October.	Norton Healthcare/Ironman Triathlon.	Louisville, KY	Ohio River, Mile 600.5–605.5 (Kentucky).
94. 2 days—Two days in October	Secret City Head Race Regatta ...	Oak Ridge, TN	Clinch River, Mile 49.0–54.0 (Tennessee).
95. 3 days—First weekend in November.	Atlanta Rowing Club/Head of the Hooch Rowing Regatta.	Chattanooga, TN	Tennessee River, Mile 463.0–468.0 (Tennessee).
96. 1 day—Second weekend in December.	Charleston Lighted Boat Parade ..	Charleston, WV	Kanawha River, Mile 54.3–60.3 (West Virginia).

* * * * *

Dated: March 26, 2023.

H.R. Mattern,*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2023-06934 Filed 4-3-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF COMMERCE**Patent and Trademark Office****37 CFR Parts 1 and 41**

[Docket No. PTO-P-2023-0005]

RIN 0651-AD66

Reducing Patent Fees for Small Entities and Micro Entities Under the Unleashing American Innovators Act of 2022*Correction*

In rule document 2023-05382, appearing on pages 17147–17159, in the issue of Wednesday, March 22, 2023, make the following corrections:

■ On page 17157, § 1.445 is corrected to read as set forth below.

§ 1.445 International application filing, processing and search fees. [Corrected]

* * * * *

(B) For an international application having a receipt date that is on or after October 2, 2020 and before December 29, 2022:

Table 2 to Paragraph (a)(1)(i)(B)

* * * * *

(C) * * *

Table 3 to Paragraph (a)(1)(i)(C)

* * * * *

(ii) * * *

Table 4 to Paragraph (a)(1)(ii)

* * * * *

(2) * * *

(i) For an international application having a receipt date that is on or after April 1, 2023:

* * * * *

[FR Doc. C1-2023-05382 Filed 3-31-23; 8:45 am]

BILLING CODE 0099-10-D

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 17**

RIN 2900-AR48

Copayment Exemption for Indian Veterans**AGENCY:** Department of Veterans Affairs.**ACTION:** Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as final, with changes, a proposed rule to amend its medical regulations to implement a statute exempting Indian and urban Indian veterans from copayment requirements for the receipt of hospital care or medical services. This final rule also exempts such veterans from copayments for all urgent care visits.

DATES: This rule is effective April 4, 2023.

FOR FURTHER INFORMATION CONTACT: Mark Upton, Deputy to the Deputy Under Secretary for Health, Office of the Deputy Under Secretary for Health (10A), 810 Vermont Avenue NW, Washington, DC 20420, 202-461-7459.

(This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (FR) on January 12, 2023, VA proposed to amend its medical regulations at §§ 17.108, 17.110, 17.111, and 17.4600 of title 38, Code of Federal Regulations (CFR) to exempt from copayments veterans who submit documentation to VA to demonstrate they are either Indian or urban Indian, as those terms are defined in section 4 of the Indian Health Care Improvement Act (further codified at 25 U.S.C. 1603(13) and (28)), for hospital care or medical services received on or after January 5, 2022. 88 FR 2038. VA also proposed retroactive reimbursement for copayments already paid by these veterans for such care provided on or after January 5, 2022. VA provided a 30-day comment period, which ended on February 13, 2023. Forty-four comments were received, of which one was a duplicate comment, for a total of forty-three unique comments. Nine commenters expressed support for the proposed rule in whole. VA appreciates these commenters' support and does not further address their comments below. The remaining commenters expressed concerns with the proposed rule in whole or in part, and their comments are addressed below by topic. As explained in more detail below, VA makes changes to the rule based on the comments.

Discrimination

VA received several comments alleging that this copayment exemption is discriminatory and unfair to those

veterans who are not Indian or urban Indian. Commenters asserted that the proposed rule gives preference based on ethnicity or race and questioned why VA is not eliminating copayments for other veterans based on race, ethnicity, or sex. One commenter was neutral on the proposed rule, but asked VA to clarify why it was providing this copayment exemption to this group of veterans over other races. Some of these commenters also alleged that this rulemaking is part of a current political agenda. VA makes no changes to the rule based on these comments.

Pursuant to section 1710(f) and (g) of title 38, United States Code (U.S.C.), VA must charge certain veterans a copayment for hospital care, nursing home care, and medical services furnished by VA, unless otherwise exempted under law. As VA explained in the proposed rule, Congress mandated that VA exempt from copayments for hospital care or medical services those veterans who are Indian or urban Indian, as such terms are defined in section 4 of the Indian Health Care Improvement Act (codified in 25 U.S.C. 1603). This mandate is codified in law at 38 U.S.C. 1730A (as amended by section 3002 of the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (the “Act”), Pub. L. 116–315).

The underlying bill, the Native American PACT Act (H.R. 4908) which became part of the Act, was separately passed by the U.S. House of Representatives on September 22, 2020. In support of this legislation, Democratic and Republican representatives explained Congress’s rationale for introducing and passing this legislation. Representative Mark Takano explained, in pertinent part:

The Federal Government has a legal and moral obligation to uphold its treaty obligations to Tribal nations, which include the provision of healthcare. Our responsibility to ensure care is compounded when American Indians and Alaska Natives serve this country in uniform . . . For far too many Native Americans, particularly those in rural areas, the copay burden is a barrier to care. These veterans, who may be unable to access specialty care from their Tribal health systems, are then unable to access VA due to cost. Eliminating the copay burden is a step toward upholding the treaties between the United States and Tribal nations while also bringing immediate relief to veterans unable to access care during these distressing times.

See House Congressional Record dated September 22, 2020, H4678–4679.

Representative David P. Roe further stated, in pertinent part:

[A]lmost a century ago, Congress passed the Snyder Act, which guaranteed healthcare

to Native Americans free of charge. In recognition of that, the Native American PACT Act would prohibit VA from charging copayments to Native American veterans regardless of whether the care they receive from the VA is for a service-connected condition or not . . . [t]his bill would increase access to care for those brave veterans and create parity between the care provided to them through the VA, the Centers for Medicare and Medicaid Services, and the Indian Health Service. It would also uphold the United States Government’s longstanding trust and treaty responsibilities to the Native American community. Id. at H4679.

Thus, the Congressional record is clear that Congress’s rationale for exempting Indian and urban Indian veterans from copayments was based on fulfilling the promise this country made to Tribal nations as part of its trust and treaty responsibilities to provide American Indians and Alaska Natives with free health care, increasing access to care, and supporting parity for the provision of care by VA and other Federal agencies. Furthermore, on numerous occasions, the United States Supreme Court specifically has upheld legislation that singles out American Indians or Alaska Natives for particular and special treatment. See, for example, *Morton v. Mancari*, 417 U.S. 535 (1974).

To comply with the mandate in 38 U.S.C. 1730A, VA proposed to revise its regulations to exempt from copayments those veterans who are Indian or urban Indian as defined in 25 U.S.C. 1603(13) and (28). Unless explicitly allowed by law, VA cannot exempt from copayments other groups of veterans. See 38 U.S.C. 1710(f) and (g). Contrary to commenters’ assertions, this copayment exemption for such individuals was not based on discrimination or VA showing preference for certain races or ethnicity, it was a requirement of law.

In response to those commenters who suggest that this is part of a current political agenda, the copayment exemption mandated by section 1730A was signed into law by then President Trump on January 5, 2021. As reflected in the excerpts from the Congressional record related to H.R. 4908 discussed further above, there was also bipartisan Congressional support for exempting Indian and urban Indian veterans from copayments. See also, *Tester, Moran Introduce Bipartisan Bill to Increase Native American Veterans’ Access to VA Health Care, Eliminate Copays*, Nov. 18, 2020, <https://www.veterans.senate.gov/2020/11/tester-moran-introduce-bipartisan-bill-to-increase-native-american-veterans-access-to-va-health-care-eliminate-copays>.

Trust Responsibility

Some commenters requested VA clarify in the rulemaking that the copayment exemption under 38 U.S.C. 1730A is due to the Federal government’s trust responsibility. VA’s specific statutory authority and mandate for the copayment exemption is 38 U.S.C. 1730A as amended by section 3002 of the Act. However, as discussed above, the Congressional history for this copayment exemption illustrates that Congress proposed this legislation in part based on a trust responsibility with American Indian and Alaska Native communities. As discussed below, VA considered this trust responsibility in the response to comments received that suggested VA exempt copayments for all urgent care visits.

Definition of Indian or Urban Indian

One commenter supported using a definition of Indian used by the Indian Health Service (IHS) as such definition is familiar to Tribal members and would provide consistency, avoid confusion, and improve the tribes’ ability to notify Tribal members of changes. Another commenter suggested that American Indian and Alaska Native veterans from a federally or State recognized Tribe or a Native Nation, or who are descendants of a Tribal or Native Nation member should be eligible for this copayment exemption. VA does not make any changes to the rule based on these comments.

VA is using the definitions of Indian and urban Indian required by law for purposes of this rulemaking. Section 1730A of 38 U.S.C. was amended to add a copayment exemption for veterans who are either Indian or urban Indian, as further defined in 25 U.S.C. 1603(13) and (28). 88 FR 2038–2039. Paragraph 13 of section 1603 defines the term Indians or Indian as any person who is a member of an Indian Tribe, as that term is further defined in section 1603(14), except that, for the purpose of 25 U.S.C. 1612 and 1613, such terms shall mean any individual who: (1) irrespective of whether he or she lives on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member; (2) is an Eskimo or Aleut or other Alaska Native; (3) is considered by the Secretary of the Interior to be an Indian for any purpose; or (4) is determined to be an Indian pursuant to regulations

promulgated by the Secretary of Health and Human Services.

Paragraph 28 of section 1603 defines the term urban Indian as any individual who resides in an urban center (as such term is further defined in section 1603(27)) and who meets at least one or more of the four criteria in the definition of Indian in 25 U.S.C. 1603(13) (as described above in a previous paragraph regarding the definition of Indians or Indian). Thus, these definitions apply to those eligible for the provision of healthcare by IHS and include those individuals the commenter references, such as members of federally and State recognized tribes and descendants of such members.

To the extent the commenters are suggesting VA expand eligibility beyond those defined as Indian or urban Indian in 25 U.S.C. 1603(13) and (28), VA is unable to do so as the statute is clear that VA must use those definitions.

Documentation

Several commenters had a variety of concerns related to the proposed requirement that veterans submit documentation to demonstrate they meet the definition of Indian or urban Indian. These commenters suggested that instead VA allow such veterans to self-attest that they meet the definition of Indian or urban Indian. As explained in more detail below, their concerns focused on evaluating and verifying documentation, the benefits of self-attestation, the Tribal consultation process, and acceptable forms of documentation. VA makes no changes to the rule based on these comments for the reasons explained below.

Evaluating and Verifying Documentation

Some commenters were concerned that VA does not have the capability to receive, process, evaluate, and validate the documentation that VA proposes to require veterans submit in order to verify that they meet the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28). The commenters were particularly concerned given the diversity and volume of potential documents.

VA will be able to properly evaluate the submitted documents to determine if a veteran meets the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28). VA will have dedicated staff to perform this function who will receive robust training on the types of acceptable documentation and how to properly evaluate and verify such documentation. This will include input and guidance from VA's own Tribal experts, such as its Office of

Tribal Government Relations and Office of Tribal Health. Collecting and evaluating documentation to determine an individual's membership in a Tribe is something that other agencies, such as IHS and the Bureau of Indian Affairs (BIA), as well as many American Indian and Alaska Native health organizations do. In fact, VA intends to mirror how IHS makes these determinations. VA does not believe it will be an undue burden on VA staff to perform these tasks. Other commenters were concerned that VA verifying and determining the legitimacy of the documents will usurp Tribal sovereignty. Another commenter also stated that there should not be an administrative burden put on Tribal enrollment staff to document a veteran's status as Indian or urban Indian.

While there are 574 federally recognized tribes that may have different types of documentation, VA will defer to American Indian and Alaska Native Tribal governments regarding the documentation they issue to members of their Tribe. VA will accept such documentation as proof that a veteran meets the definition of Indian or urban Indian in 25 U.S.C. 1603(13) and (28) for purposes of this copayment exemption. VA will not require American Indian and Alaska Native Tribal governments to issue specific documentation for the purpose of demonstrating that a member of the Tribe meets the definition of Indian or urban Indian. Therefore, VA will not be usurping Tribal sovereignty or imposing additional burdens on American Indian and Alaska Native Tribal governments to issue documentation other than what they already issue members of their Tribe. A Tribe's existing documentation of an individual's status as a member of a Tribe will be sufficient. Requiring submission of documentation also shows respect for American Indian and Alaska Native Tribal governments and acknowledges that the tribes determine who are members.

Benefits of Self-Attestation

Some commenters supported self-attestation because they stated that other agencies use self-attestation. VA agrees that it is important for VA to understand how other agencies determine an individual's status as an Indian or urban Indian under 25 U.S.C. 1603(13) and (28). VA learned that IHS, BIA, and other American Indian health organizations require documentation in order to be eligible for their benefits and services. Therefore, for purposes of Federal benefits and services, tribes are familiar with providing their members with documentation and their members

are familiar with providing documentation to Federal agencies to receive health care benefits.

Some commenters raised concerns that some Indian and urban Indian veterans may face barriers in obtaining documentation due to homelessness, financial instability, moving during military service, and lack of resources or culturally competent representation which can discourage these veterans from seeking the copayment exemption. VA believes that submission of documentation will not be a burden on most such veterans since they already have this documentation or could easily obtain it. In addition, VA staff will be available to provide veterans with information on documentation that VA will accept for purposes of this copayment exemption and can assist veterans with reacquiring documentation they may have lost. VA will also proactively communicate with American Indian and Alaska Native veterans about this copayment exemption and how they may apply. Additionally, VA is engaged in a robust effort to educate all stakeholders about this copayment exemption and is committed to continued engagement with its stakeholders about how best to implement and educate others about the rule.

Some commenters opined that self-attestation increases access to health care without compromising the integrity of VA's services. Other commenters stated that despite VA's concern that self-attestation may present an unreasonable risk that VA would provide the copayment exemption to veterans who do not meet the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28), self-attestation would not present an unreasonable risk and that VA failed to provide any evidence of such unreasonable risk. The commenters further stated that existing authorities, such as 38 U.S.C. 6103 and 18 U.S.C. 1035, can help minimize risk of misrepresentation of a veteran's status as Indian or urban Indian in self-attestations.

VA believes that self-attestation could result in veterans who are not eligible for the benefit erroneously receiving the benefit. VA has a responsibility to ensure that only those who are eligible for this copayment exemption receive it. As explained in the proposed rule, requiring documentation rather than self-attestation would allow VA to ensure, through audits, that it is fulfilling its duty to only exempt those veterans who are eligible pursuant to section 1730A. 88 FR 2040.

VA is unable to audit the information provided in a self-attestation without

additional documentation to support the self-attestation. Therefore would not be in a position to establish that a veteran accurately attested to being an Indian or urban Indian on the VA Forms 10–10EZ or 10–10EZR without obtaining additional information if it were to adopt self-attestation. In this regard, while VA Forms 10–10EZ and 10–10EZR previously had a question about whether a veteran meets these definitions of Indian or urban Indian, that question was removed in February 2023. The current VA Form 10–10EZ does have a question on race, which includes American Indian or Alaska Native. However, VA Form 10–10EZR does not. Regardless, if VA used either of these questions to establish a veteran met the definition of Indian or urban Indian, there would be no way to audit that attestation without requesting additional documentation. Requiring documentation allows VA to audit whether a veteran meets the definition of Indian or urban Indian in 25 U.S.C. 1603(13) and (28) without the need to later collect more information.

If VA allowed self-attestation only, it could result in those who are ineligible receiving the copayment exemption, and VA failing to fulfill its responsibilities under the law. While VA acknowledges that under certain existing authorities it is a violation of Federal law to knowingly or willingly make a false statement related to benefits, some veterans may genuinely believe they meet the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28), but simply do not. Therefore, it would not be clear that these veterans were knowingly or willingly making a false statement or representation, and it is not certain that they would be deterred from indicating on the VA Form 10–10EZ that they meet the definition.

Several commenters recommended VA allow veterans to initially self-attest they meet the definitions of Indian or urban Indian, after which the veteran can submit necessary documentation to show they meet the definitions within a certain period of time, which, as one of the commenters opined, could be extended if there was a good faith effort on the veteran's part to acquire the documentation. These commenters opined that this will allow VA to implement a policy where it can verify or review documentation later while ensuring that American Indian and Alaska Native veterans receive this copayment exemption immediately and do not encounter a barrier to care. One of these commenters suggested that if VA needs an additional document from a veteran who self-attests, the

copayment exemption should remain in place until an appeal is completed.

VA will be providing reimbursement retroactive to January 5, 2022, to eligible veterans after VA reviews the submitted documentation and updates the veteran's record to make them exempt from copayments. Therefore, VA does not believe allowing for self-attestation followed by documentation is necessary. These veterans will be reimbursed for copayments for care provided on or after January 5, 2022, regardless of when they submit their documentation. Thus, any hardship based on when they submit documentation will be reduced by VA's reimbursement once documentation is received.

As discussed above, VA also does not believe that veterans should experience undue burden submitting documentation as they likely already have it or can easily obtain it, particularly as the documentation VA will accept includes those commonly issued by American Indian and Alaska Native Tribal governments to members of their tribes and are required by IHS to receive healthcare services.

Additionally, allowing veterans to self-attest that they meet the definition of Indian or urban Indian and then provide additional documentation at a later date would create administrative and logistical challenges for VA and potential hardships for the veterans. If VA were to exempt a veteran based on self-attestation with additional documentation to follow at a later date, VA would have the added responsibility of tracking this preliminary eligibility and, in cases where a veteran did not submit the required additional documentation, VA would have to follow up with the veteran to request the documentation, potentially on several occasions. If VA ultimately does not receive acceptable documentation from the veteran, VA would have to collect from the veteran any copayments that had been inappropriately exempted, resulting in an added burden to VA and potential hardship for the veteran.

Tribal Consultation

Several commenters alleged that VA mischaracterized or misrepresented the information it requested and received during Tribal consultation related to this rulemaking. These commenters opined that the questions posed by VA as part of Tribal consultation were narrower in scope than the definitions of Indian and urban Indian in 25 U.S.C. 1603 and incorrectly framed the statutory language that authorizes the exception. These commenters also

opined that VA's statement in the proposed rule that it published a notice regarding the documentation that VA can use to identify veterans who meet the definitions of Indian or urban Indian under 38 U.S.C. 1730A was inaccurate. These commenters further stated that this did not provide American Indian and Alaska Native Tribal government leaders with the opportunity to fully consider the extent of American Indian and Alaska Native veterans eligible for the copayment exemption or provide feedback on documentation that may be required to determine eligibility for the copayment exemption. The commenters were concerned that VA inappropriately and misleadingly claimed that American Indian and Alaska Native Tribal governments supported requiring all American Indian and Alaska Native veterans to submit documentation to determine eligibility for the copayment exemption although VA never posed this question during Tribal consultation. Thus, these commenters opined that VA improperly relied upon the feedback received during consultation to support its decision to require veterans submit documentation for purposes of this copayment exemption.

In the **Federal Register** Notice (FRN) dated April 1, 2021, VA referenced the definitions of Indian and urban Indian as defined in 25 U.S.C. 1603(3). Moreover, in the supplementary section of the FRN, VA explained the changes made to 38 U.S.C. 1730A by section 3002 of the Act to exempt from copayments those who are Indian or urban Indian as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603). 86 FR 17267 (April 1, 2021). VA further stated that it was seeking input from Tribal governments, Indians, and urban Indians regarding documentation that can be used by VA's health care system to identify those veterans who are Indians or urban Indians (as defined in 25 U.S.C. 1603). Id. VA further notes that section 1603(13) defines Indian, in pertinent part, to mean any person who is a member of an Indian Tribe. Thus, with regards to information that VA was seeking to determine eligibility for this copayment exemption, the FRN was not narrower than the statutory authority.

Additionally, VA asked for input on specific documentation, as well as other information or documentation that is available for determining if a veteran is a member of an Indian Tribe, potential sources of the information or documentation, and how VA should determine whether a veteran is a member of an Indian Tribe (whether through documentation, self-certification, other methods). Id.

As VA explained in the proposed rule, the majority of comments received during the Tribal consultation session and in the 30-day period after it, in which written comments could be submitted to VA, supported documentation, with some commenters providing examples of documentation VA could use. However, several commenters supported self-attestation. To the extent that the request was not clear, VA provided an opportunity to submit comments during the April 29, 2021 Tribal consultation and for a period of 30 days after such Tribal consultation and to submit comments on the proposed rule. VA has taken all comments received into consideration when establishing the final rule.

Acceptable Documentation

One commenter appeared to oppose the submission of documentation to demonstrate a catastrophically disabled veteran meets the definition of Indian or urban Indian for purposes of copayment exemption under 38 U.S.C. 1730A.

While not entirely clear, it appears this commenter believes that VA is requiring veterans who are catastrophically disabled *and* are also Indian or urban Indian to submit documentation to show such status. VA clarifies that section 1730A requires copayment exemption for two different groups of veterans: (1) veterans who are catastrophically disabled and (2) veterans who are Indian or urban Indian as defined in 25 U.S.C. 1603. A veteran can qualify under either category for this copayment exemption, but does not need to qualify under both.

For a veteran to be eligible for this copayment exemption as a catastrophically disabled veteran under 38 U.S.C. 1730A(b)(1), they must undergo examination and be found by VA to have a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others. See 38 CFR 17.36(e). In order to be eligible for this copayment exemption as an Indian or urban Indian under 38 U.S.C. 1730A(b)(2), the veteran must provide documentation establishing that they meet the definition of Indian or urban Indian as defined in 25 U.S.C. 1603(13) and (28).

However, a catastrophically disabled veteran who also meets the definition of Indian or urban Indian as defined in 25 U.S.C. 1603(13) and (28) does not need to provide additional documentation that demonstrates they are Indian or

urban Indian unless they are interested in a copayment exemption for more than three urgent care visits in a calendar year. This is discussed in more detail below. VA is not otherwise adding an additional requirement for catastrophically disabled veterans. Some commenters supported accepting identification and verification issued by American Indian and Alaska Native Tribal governments, such as Tribal identifications cards, for purposes of this copayment exemption. Another commenter recommended VA expand the list of acceptable documentation to include Tribal government verification, Tribal enrollment or identification cards, Tribal letters, kinship reports, and other documentation that promotes a veteran's ability to receive copayment exempt benefits.

As explained in the proposed rule, VA will defer to American Indian and Alaska Native Tribal governments with respect to the documentation they issue to show who is a member of their Tribe. 88 FR 2039. This may include some of the documents that the commenters listed such as Tribal identification and enrollment cards, Tribal letters, and other documentation issued by tribes to demonstrate an individual is a member of their Tribe. VA will issue additional communications that provide veterans with examples of acceptable documents so that veterans know the documentation they may submit to demonstrate that they meet the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28) and are eligible for this copayment exemption. However, in this rulemaking, VA has provided a description of the types of acceptable documents rather than an enumerated list of all acceptable documents to allow for additional documents if developed by American Indian and Alaska Native Tribal governments.

While one of these commenters suggested VA accept kinship reports, VA declines to include that in the description of acceptable documents as those would not demonstrate that a veteran meets the definition of Indian or urban Indian under 25 U.S.C. 1603(13) and (28). That same commenter also suggested VA accept other documentation that promotes a veteran's ability to receive copayment exempt benefits but did not provide examples of what those other documents may be. To the extent they are suggesting VA accept documentation other than those consistent with VA's description of acceptable documentation, VA declines to do so as the categories of acceptable documentation align with the statutory

definition of Indian or urban Indian in 25 U.S.C. 1603(13) and (28).

Several commenters suggested that VA accept specific documents issued by entities, such as IHS, Tribal Health Programs (THP), and Urban Indian Organizations (UIO) that provide health care to American Indians and Alaska Natives. Suggested documents include proof of prior visit, health care records, patient registration record, and other records that show eligibility status. One commenter suggested VA improve coordination and interoperability of systems to allow sharing of records between VA and IHS for purposes of determining a veteran is eligible for this copayment exemption.

As explained directly above, while VA will not include in the regulations an enumerated list of documents that may be submitted to demonstrate that a veteran meets the definition of Indian or urban Indian as defined in 25 U.S.C. 1603(13) and (28), the documents suggested by these commenters also appear problematic because it appears that some individuals who are eligible to receive healthcare from IHS, THP, and UIO do not meet the definition of Indians or urban Indians in 25 U.S.C. 1603(13) and (28). See 42 CFR 136.12. Relying on documents that may be issued to individuals who received care from IHS, THP, or UIO but that do not meet the section 1603(13) and (28) definitions essentially would allow these organizations, rather than VA, to make determinations that veterans meet the definition of Indian or urban Indian when they may not.

VA makes no changes based on these comments.

Covered Services

Several commenters, including Tribal Nations, intertribal organizations, Tribal health boards, and Indian health clinics, together serving hundreds of Tribal Nations, suggested VA waive all copayments for all health care services provided to veterans who meet the definition of Indian or urban Indian in 25 U.S.C. 1603(13) and (28). VA has authority to exempt copayments of hospital care and medical services pursuant to 38 U.S.C. 1730A. VA has distinct authority related to copayments for the hospital care and medical services provided to veterans through the urgent care benefit under 38 U.S.C. 1725A. VA interprets the comments to request additional exemptions both beyond hospital care and medical services pursuant to section 1730A and section 1725A. We will address both scenarios below and will make changes to the rule based on the comments related to urgent care.

One Tribal Nation asserted that there should be no limitation on the exemption for copayments as VA should not be more restrictive than the statutory authority. Another of these commenters further noted that copayment exempt elder care services are important since obtaining such care through VA will lighten the burden on IHS and Tribal health care providers, particularly as Tribal members are having longer lifespans. VA interprets these comments to mean that VA should provide a copayment exemption for all services furnished by VA even if they are not hospital care and medical services.

Section 1730A explicitly exempts copayments for hospital care and medical services. VA has interpreted those terms consistent with their statutory definitions in 38 U.S.C. 1701(5) and (6) and in 38 CFR 17.30(a).

Section 1701(5), in pertinent part, defines hospital care to include medical services rendered in the course of the hospitalization of any veteran, and travel and incidental expenses pursuant to the provisions of 38 U.S.C. 111.

Section 1701(6) defines medical services to include, in addition to medical examination, treatment, and rehabilitative services, the following: (1) surgical services; (2) dental services and appliances as described in 38 U.S.C. 1710 and 1712; (3) optometric and podiatric services; (4) preventive health services; (5) noninstitutional extended care services, including alternatives to institutional extended care that the Secretary may furnish directly, by contract, or through provision of case management by another provider or payer; (6) in the case of a person otherwise receiving care or services under chapter 17, wheelchairs, artificial limbs, trusses, and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary; (7) travel and incidental expenses pursuant to 38 U.S.C. 111; and (8) chiropractic services.

Consistent with section 1701(6), VA has defined medical services in 38 CFR 17.30(a) to include, in addition to medical examination, treatment, and rehabilitative services: (1) surgical services, dental services and appliances as authorized in 38 CFR 17.160 through 17.166, optometric and podiatric services, (in the case of a person otherwise receiving care or services under this chapter) the preventive health care services set forth in 38 U.S.C. 1701(9), noninstitutional extended care, wheelchairs, artificial limbs, trusses and similar appliances,

special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as are medically determined to be reasonable and necessary; (2) consultation, professional counseling, marriage and family counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, as necessary in connection with the veteran's treatment; and (3) transportation and incidental expenses for any person entitled to such benefits under the provisions of 38 CFR 70.10.

Section 3002 of Public Law 116–315 amended 38 U.S.C. 1730A to include Indian and urban Indian veterans as covered veterans who are exempted from making copayments for the receipt of hospital care or medical services. That law requires VA to apply the copayment exemption to hospital care and medical services as those terms are defined in statute; section 1701(5) and (6) of title 38 of United States Code. Thus, VA interprets 38 U.S.C. 1730A to refer only to hospital care and medical services as defined in 38 U.S.C. 1701(5) and (6) and is exempting Indian and urban Indian veterans from copayments under 17.108, 17.110, and 17.111 for inpatient hospital care, outpatient medical care, medication, noninstitutional extended care including adult day health care, noninstitutional respite care, and noninstitutional geriatric evaluation, respectively. Therefore, these veterans would still be required to pay copayments for domiciliary care, institutional respite care, institutional geriatric evaluation, and nursing home care. See 38 U.S.C. 1730B.

Several commenters expressed concern with VA's proposal to charge a copayment for urgent care after the third visit for this group of veterans. Some commenters, including Tribal Nations, intertribal organizations, Tribal health boards, and Indian health clinics, together serving hundreds of Tribal Nations, specifically recommended VA exempt all urgent care visits from copayments as they explained that charging for urgent care visits after the first three visits in a calendar year is contrary to Congressional intent and the Federal government's trust responsibility. Some of these commenters asserted that veterans may delay or forgo needed care if they are charged a copayment for urgent care visits beyond the first three visits in a calendar year, especially as primary care is often less accessible than urgent care for American Indians and Alaska

Natives. Relatedly, other commenters suggested VA exempt copayments for all urgent care as such care fills gaps where primary care is scarce or nonexistent, and copayments for such care can be a barrier for those who have to travel far for needed care, such as those in Alaska. One of these commenters suggested that alternatively, VA could exempt copayments for urgent care beyond three visits in a calendar year when an American Indian or Alaska Native veteran has to travel more than 100 miles or travel more than two or three hours for urgent care. Another commenter recommended VA extend the copayment exemption for urgent care visits beyond the initial three in a calendar year if extenuating circumstances warrant additional urgent care visits, such as when a medical appointment is canceled and cannot be rescheduled within the time that the veteran may need to address their medical issue. One commenter also recommended all urgent care visits at Indian health care providers and IHS, THP, or UIO facilities be exempt from copayments.

VA considered these comments and has decided not to finalize its proposal to exempt only the first three urgent care visits from copayments for Indian or urban Indian veterans. Instead, VA will exempt all urgent care visits from copayments for such veterans. As explained in the proposed rule, VA has discretion under 38 U.S.C. 1725A to determine the appropriate copayment for urgent care visits, after the first two visits, for veterans who are otherwise exempt from copayments for VA care. Section 1725A(f)(1)(B) provides that an eligible veteran not required to pay a copayment under this title may access walk-in care (urgent care) without a copayment for the first two visits in a calendar year. For any additional visits, a copayment at an amount determined by the Secretary may be required. VA has previously utilized the authority provided under section 1725A to require copayments for all veterans, irrespective of their priority group enrollment, level of service-connected disability, or designation as catastrophically disabled, after the first three visits in a calendar year because the copayment is designed to encourage appropriate use of the benefit. 88 FR 2041. However, based on the comments received, VA has determined that eligible Indian and urban Indian veterans will not be required to pay a copayment for urgent care visits under section 1725A.

As explained above, Congress decided to adopt a copayment exemption for Indian and urban Indian veterans in

recognition of this country's promise to Tribal nations as part of its trust and treaty responsibilities to provide American Indians and Alaska Natives with free health care, to increase access to care, and to support parity for the provision of care by VA and other Federal agencies. As Representative Takano explained, the "Federal Government has a legal and moral obligation to uphold its treaty obligations to Tribal nations, which include the provision of healthcare." Likewise, Representative Roe explained that the copayment exemption upholds "the United States Government's longstanding trust and treaty responsibilities to the Native American communities." Our unique responsibilities to this community counsel in favor of exempting Indian and urban Indian veterans from all urgent care copayments.

In addition, as the commenters explained, primary care is often less accessible than urgent care for American Indians and Alaska Natives, who often have to travel long distances to receive primary care. As a result, Indian and urban Indian veterans in some cases may find it necessary to use urgent care more than three times in a year, including in circumstances where primary care is not a meaningfully available alternative. Charging a copayment for those visits could deter this population from seeking necessary care. VA recognizes that the current copayment rules for urgent care are designed to encourage veterans to seek care from their primary care provider first, when VA can provide the needed care, and to utilize urgent care when prompt treatment is necessary to prevent the condition from becoming emergent. But for Indian and urban Indian veterans, that is often not a reasonably available option.

Several studies document that American Indian and Alaska Native people are disproportionately affected by chronic health conditions and die at higher rates than other Americans.¹ Native Americans, particularly those living in rural areas, face significant barriers in accessing health care.² The

United States Government has taken several steps to make health care more accessible, including strengthening the Indian health care system, granting greater management control of health care resources to Tribes, and removing cost sharing requirements for other federally delivered health care services.

This rule will also promote parity in how other Federal agencies address copayment rules for Indian and urban Indian veterans—which, as explained above, was one goal of Congress in adopting the copayment exemption. In the United States, Indians are generally exempted from all cost-sharing in health plans. This includes through the Indian Health Service (IHS), Medicare, and the Marketplace. Under section 1402 (d)(1) of the Patient Protection and Affordable Care Act Public Law 111–148, issuers of qualified plans must eliminate all cost-sharing, including copayments and deductibles for Indians if they obtain insurance through the Health Insurance Exchange. There is also no cost sharing for any Indian for any item or service obtained directly through IHS, Indian Tribe, Tribal organization, urban Indian organization or through referrals under contract health services without regard to income. Section 2902 of the Affordable Care Act also made permanent the reimbursement for all Medicare Part B services provided by IHS hospitals and clinics.

For the reasons stated above, in recognition of the Government's trust responsibility, comments received from Tribes, and to ensure parity with other Federal health plans, VA will eliminate all copayments for urgent care visits regardless of the provider of the urgent care services for Indian and urban Indian veterans under 38 U.S.C. 1725A. For these reasons VA will also reimburse these veterans copayments for all urgent care visits going back to January 5, 2022.

VA notes that we intend to conduct further consultation and to publish a public request for information to obtain additional input from veterans on topics such as primary care access, the use of urgent care under section 1725A, and its role in health care delivery for all veterans.

Effective Date

One commenter recommended the changes to the regulations take effect immediately. The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment and provide not less than 30 days before the rules become effective. An agency may bypass the APA's 30-

day delay requirement if good cause exists, 5 U.S.C. 553(d)(3), or if the rule "recognizes an exemption or relieves a restriction," 5 U.S.C. 553(d)(1). As this rule recognizes a copayment exemption, VA finds that it can publish this final rule with an immediate effective date and forgo the 30-day delay requirement. 38 U.S.C. 553(d)(1).

Cost/Unfunded Mandate

One commenter expressed concern about the cost of this rulemaking and disagreed with VA's assertion that this rule would not result in an unfunded mandate. VA makes no changes based on this comment. As stated in the proposed rule, unfunded mandates apply to any rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This rule will not result in an expenditure by State, local, and Tribal governments, or by the private sector of \$100 million or more (adjusted annually for inflation) in any one year. As explained in the regulatory impact analysis accompanying the proposed rule, VA estimated a 5-year impact of a loss of revenue to VA in the amount of approximately \$20.4 million dollars and a 10-year impact of a loss of revenue to VA in the amount of approximately \$50 million. This rulemaking does not require any expenditures by any State, local, or Tribal governments, as this rule only waives copayments for VA health care to certain veterans. VA refers the commenter to the regulatory impact analysis accompanying this rulemaking for a detailed analysis of the estimated costs for this rule.

Comments Outside the Scope of the Rulemaking

One commenter suggested VA spend time on the Paperwork Reduction Act (PRA) rather than the proposed rule, particularly as they opined that the proposed rule is redundant, repetitive, and not concise. However, the commenter did not recommend any specific changes to the rulemaking. VA considers this comment outside the scope of the rulemaking and makes no changes based on it.

Another commenter suggested that in future rulemakings that have an associated information collection subject to PRA, VA coordinate with the Office of Management and Budget (OMB) to allow tribes and Tribal organizations to actively participate in the rulemaking process through the submission of a written comment with sufficient time and notice. As part of the proposed rule, the public, to include

¹ Issue Brief: Health Insurance Coverage and Access to Care for American Indians and Alaska Natives: Current Trends and Key Challenges, U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation, July 22, 2021, <https://aspe.hhs.gov/sites/default/files/2021-07/aspe-ai-an-health-insurance-coverage-ib.pdf> (last visited Mar. 28, 2023).

² Kerry J. Cromer, et al., *Barriers to Healthcare Access Facing American Indian and Alaska Natives in Rural America*, Journal of Community Health Nursing, 36:4, 165–187 (2019), <https://www.tandfonline.com/doi/abs/10.1080/07370016.2019.1665320?journalCode=hchn20> (last visited Mar. 28, 2023).

tribes and Tribal organizations, had the opportunity to submit comments on the information collection associated with this rulemaking, which is the case for all proposed rules that have an associated information collection. As VA explained in the proposed rule, a comment is best assured of having its full effect if OMB receives it within 30 days of publication of the proposed rule. Additionally, VA conducted Tribal consultation prior to the proposed rule and provided American Indian and Alaska Native Tribal governments and others the opportunity to provide VA with feedback about how VA could confirm a veteran meets the definitions in 25 U.S.C. 1603(13) and (28), including documentation that could or should be submitted for purposes of this copayment exemption. Consistent with VA policy, VA will continue to conduct Tribal consultations on issues that impact veterans who are members of tribes. The commenter did not recommend any changes to the rulemaking. VA makes no changes based on this comment.

Some commenters requested that VA host an urban confer and/or an additional Tribal consultation on this rule and the documentation requirements. While we consider this comment outside the scope of the rule, VA conducted Tribal consultation prior to the proposed rule and provided American Indian and Alaska Native Tribal governments and others the opportunity to provide VA with feedback on information and documentation that VA could use to identify veterans who are members of a Tribe. Additionally, as part of the rulemaking process, VA provided the public, including American Indian and Alaska Native Tribal governments, veterans, and Indian health organizations, the opportunity to comment on its proposed rule. VA seriously considered all comments received during the consultation and public comment process and made changes to the rule based on comments received by the tribes. VA does not believe it is necessary to conduct additional Tribal consultation or an urban confer on this rulemaking. As explained earlier in this preamble, VA is engaged in a robust effort to educate all stakeholders about this copayment exemption and is committed to continued engagement with its stakeholders about how best to implement and educate others about the rule. VA makes no changes to the rule based on these comments.

Several commenters made suggestions related to VA's implementation of this rule, including ensuring staff has

adequate training and expertise to review documentation; ensuring determinations on eligibility for the copayment exemption are made by those who have specialized training and requisite subject matter expertise; conducting outreach to veterans, VA facilities, community providers, and active duty servicemembers (when they leave service); providing veterans with clear guidance and assistance on acceptable documentation; providing a defined process and timeline for identifying the copayments that will be reimbursed; and sharing data with Indian country on the utilization of the copayment exemption.

While VA considers these comments outside the scope of this rulemaking since they concern internal VA processes not appropriate for regulation, VA considered them while creating the implementation plan for the copayment exemption. Initially, VA will provide information to veterans on the types of acceptable documentation that may be submitted for this copayment exemption and will communicate information on this copayment exemption to all veterans, including those who are American Indian and Alaska Native. VA will also have a website that provides information on the copayment exemption, including a list of acceptable documentation. VA will have designated staff that will have the necessary subject matter expertise and training to properly review the submitted documentation to confirm eligibility for the copayment exemption. Frontline staff at VA facilities will be expected to direct veterans to VA's website explaining the benefit and acceptable documentation as well as direct them to specific employees who can further address any questions veterans may have. VA will also work towards ensuring that active duty servicemembers transitioning out of military service are made aware of this copayment exemption. As part of implementation, VA is determining how it will collect and analyze data related to this copayment exemption. As part of that effort, VA intends to reach out to American Indian and Alaska Native Tribal governments and will consider sharing utilization with them as appropriate. VA is developing a process for issuing reimbursements to veterans who are eligible for such reimbursements retroactive for covered services provided on or after January 5, 2022. As the time for processing these reimbursements will be dependent on the volume of veterans who are determined to be eligible for this copayment exemption, VA will be

unable to provide specific timeframes for reimbursement. However, VA will make every effort to process reimbursements as quickly as possible. VA makes no changes to the regulations based on these comments.

One commenter recommended that VA retain copies of the documentation once it is submitted and update its records to identify the veteran as Indian or urban Indian and exempt them from future copayments. VA considers this comment outside the scope of the rule. However, VA will retain documentation submitted by veterans and once VA receives acceptable documentation, VA will update the veteran's VA records to ensure that VA does not charge eligible veterans copayments for covered care. VA makes no changes based on this comment.

One commenter stated that veterans should have access to culturally relevant services and care, and VA should work closely with Urban Indian Health Organizations or Tribal Health Organizations. While VA considers this comment outside the scope of the rule, VA is committed to working with partner stakeholders to better serve Indians and urban Indian veterans when possible. Future engagements with these stakeholders may foster the opportunity for new and expanded partnerships. VA makes no changes to the rule based on this comment.

Some commenters raised concerns regarding lack of access to culturally competent representation to assist American Indian and Alaska Native veterans relating to their benefits claims. These commenters further alleged VA has refused to work with or accredit UIO as claims representatives. VA considers these comments outside the scope of the rule and makes no changes based on them.

Regulatory Edits

VA is making several minor technical edits to the language it previously proposed. VA is also making a substantive edit to address the exemption for all urgent care visits for Indian and urban Indian veterans.

After the proposed rule published for public comment, VA published an interim final rule that amended several of VA's medical regulations, including 38 CFR 17.110(c). 88 FR 2536 (January 17, 2023). Section 17.110 was revised by the January 17, 2023, rulemaking to include paragraph (c)(13), "[m]edication for an individual as part of emergent suicide care as authorized under 38 CFR 17.1200–17.1230." Thus, in this final rule on the copayment exemption for Indian and urban Indian Veterans, VA will add paragraph (c)(14) to § 17.110 to

refer to a veteran who meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), for medications provided on or after January 5, 2022. VA will use the exact same language that it proposed as § 17.110(c)(13) in the proposed rule but it will be in paragraph (c)(14) instead and all references to paragraph (c)(13) as proposed will now reference paragraph (c)(14). VA is making no changes to the substantive language.

VA is also making minor technical edits to the language proposed in §§ 17.108(d)(14), 17.110(c)(13), 17.111(f), and 17.4600(d)(1)(ii). In those proposed paragraphs, VA explained that in order to demonstrate that a veteran meets the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation listed in the subparagraphs that follow the paragraph. However, VA finds it necessary to replace the word “listed” with the word “described” to more accurately reflect that the acceptable documentation identified in these regulations is a description rather than an exhaustive list of documents. These changes have no substantive impact on provision of benefits or services to veterans.

We are also making minor revisions to the language proposed in §§ 17.108(d)(14)(ii), 17.110(c)(13)(ii), 17.111(f)(11)(ii), and 17.4600(d)(1)(ii)(B). In those proposed paragraphs, we explained that acceptable documentation includes documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member.

However, VA now revises that language in the final rule to state that such documentation includes documentation showing that the veteran is a member of a Tribe, band, or other organized group of Indians. Thus, the language in §§ 17.108(d)(14)(ii), 17.110(c)(14)(ii) (formerly paragraph (c)(13)(ii) but revised as explained further above), 17.111(f)(11)(ii), and 17.4600(d)(1)(ii)(B) (formerly paragraph (d)(1)(ii)(B) but revised as explained further below) will read as follows: documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those

recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member.

The language VA proposed in §§ 17.108(d)(14)(i), 17.110(13)(i), 17.111(f)(11)(i), and 17.4600(d)(1)(ii)(A) described documentation issued by a federally recognized Indian Tribe that shows that the veteran is a member of the Tribe, which was intended to cover the part of the definition of Indian in 25 U.S.C. 1603(13)(A) regarding membership in a Tribe, band, or other organized group of Indians. Documents described in §§ 17.108(d)(14)(i), 17.110(c)(13)(i) (revised in this final rule as paragraph (c)(14)(i) per the discussion further above), 17.111(f)(11)(i), and 17.4600(d)(1)(ii)(A) (revised in this final rule as paragraph (d)(4)(i)(A) per the discussion further below) could overlap with the revised language to §§ 17.108(d)(14)(ii), 17.110(c)(14)(ii), 17.111(f)(11)(ii), and 17.4600(d)(1)(ii)(B) described above. However, to ensure VA is consistent with the language in the definition of Indian in 25 U.S.C. 1603(13)(A), VA will revise the language proposed in §§ 17.108(d)(14)(ii), 17.110(c)(13)(ii) (revised in this final rule as paragraph (c)(14)(ii) per the discussion further above), 17.111(f)(11)(ii), and 17.4600(d)(1)(ii)(B) (revised in this final rule as paragraph (d)(4)(i)(B) per the discussion further below), as explained in the previous paragraph. These changes have no substantive impact on provision of benefits or services to veterans.

Additionally, we are making minor revisions to the language proposed in §§ 17.108(d)(14)(i), 17.110(c)(13)(ii) (revised in this final rule as paragraph (c)(14)(ii) per the discussion further above), 17.111(f)(11)(i), and 17.4600(d)(1)(ii)(A) (revised in this final rule as paragraph (d)(4)(i)(A) per the discussion further below) to remove the hyphen between “federally-recognized” and replacing it with space so that the language in those paragraphs states “federally recognized”. This is a minor edit to ensure the appropriate use of the term. These changes have no substantive impact on provision of benefits or services to veterans.

VA is also making minor revisions to capitalize the term “Tribe” throughout §§ 17.108(d)(14), 17.110(c)(14), 17.111(f)(11), and 17.4600(d)(4), as VA did not capitalize such term in the proposed regulatory text for such sections. Capitalizing the term “Tribe” is consistent with the Government Publishing Office Style Guide.

Finally, VA is making additional edits to the language it proposed as part of the

urgent care regulation in 38 CFR 17.4600(d) to accommodate comments and expand the copayment exemption to all urgent care visits. The language in paragraph (d)(1) is amended so that it states, “Except as provided in paragraphs (d)(2) through (4) of this section.” This change will accommodate the new exception for Indian and urban Indian to be copayment exempt for all urgent care visits.

VA is amending the language that was proposed in paragraph (d)(1)(ii) and adding it as a new paragraph (d)(4)(i) in 38 CFR 17.4600. The language in paragraph (d)(1)(ii) of the proposed rule stated that a veteran would be required to pay a copayment for urgent care “[a]fter three visits in a calendar year if such eligible veteran meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28). To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation listed in paragraphs (A) through (F)”. The first sentence of (d)(4)(i) will now read “If an eligible veteran meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), they are exempt from copayments for all urgent care visits.” In addition, we revise the second sentence in paragraph (d)(4)(i) to state “To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation described in paragraphs (d)(4)(i)(A) through (F) of this section.”. This change will be consistent with the language proposed in the changes to §§ 17.108, 17.110, and 17.111 and to clarify that we are referring to paragraphs (A) through (F) of paragraph (d)(4)(i) of § 17.4600. This revised language also includes the change from “listed” to “described” as explained further above as well the new paragraph designation. This change has no substantive impact on provision of benefits or services to veterans.

VA is adding this revised language as a new paragraph (d)(4)(i) instead of as proposed paragraph (d)(1)(ii) because paragraph (d)(1), except as provided in paragraph (d)(2) or (3), explains when an eligible veteran is obligated to pay a copayment of \$30 to VA. Since VA is expanding the copayment exemption to all urgent care visits, the revised language is added as an exception to the copayment requirement in paragraph (d)(1).

Further, the language in paragraph (d)(4)(i) of the proposed rule is added as new paragraph (d)(4)(ii), and to be consistent with the structural changes described above, the references to paragraph (d)(1)(ii) are revised to

paragraph (d)(4)(i). This change has no substantive impact on provision of benefits or services to veterans.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** and provide a 30-day delay before the rule becomes effective. However, an agency may bypass the APA's 30-day delay requirement if the rule "recognizes an exemption or relieves a restriction," 5 U.S.C. 553(d)(1). This rule recognizes an exemption, in particular, a copayment exemption for Indian and urban Indian veterans, and will therefore not have the 30-day delay before it becomes effective.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this final rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule will not cause a significant economic impact on small entities since this exemption is limited to individual veterans who VA determines to be Indian or urban Indian. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the

expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Government agencies must seek approval from the Office of Management and Budget (OMB), which assigns a control number for each collection of information it approves. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays currently valid OMB control number (5 CFR 1320.8(b)(3)(vi)).

This final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 that require approval by OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

Sections 17.108, 17.110, 17.111, and 17.4600 contain new collections of information. OMB has filed a comment on these information collections that were submitted in conjunction with the proposed rule. OMB requested that VA develop a cover form as part of these information collections. Such cover form would accompany the veteran's documentation demonstrating that they meet the definition of Indian or urban Indian and would include the veteran's name and contact information. VA has developed such cover form and submitted it to OMB for review and approval as part of these information collections. VA anticipates these information collections to be approved 30 days after publication of the final rule.

This information will be collected from veterans to determine if they meet the definition of Indian or urban Indian as defined in 25 U.S.C. 1603(13) and (28) for purposes of exempting such veterans from copayments for certain health care. Veterans will submit documentation that demonstrates that they meet these definitions of Indian or urban Indian. VA estimates that 25,000 veterans will submit their documentation one time. The estimated average burden per response is 15 minutes. VA estimates the annual cost to all respondents will be \$175,062.50 per year (6,250 burden hours × \$28.01 per hour). To estimate the total

information collection burden cost, VA used the Bureau of Labor Statistics mean hourly wage for hourly wage for "00–0000 All Occupations" of \$28.01 per hour. This information is available at <https://www.bls.gov/oes/current/oes.nat.htm>.

If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing the collections of information or take such other action as directed by OMB. Notice of such OMB approval will be published in a future **Federal Register** document.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Day care, Government programs—veterans, Health care, Health facilities, Health records, Medical devices, Mental health programs, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 29, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by adding entries for §§ 17.111 and 17.4600 in numerical order to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.111 is also issued under 38 U.S.C. 101(28), 501, 1701(7), 1703, 1710, 1710B, 1720B, 1720D, 1722A, and 1730A.

* * * * *

Section 17.4600 is also issued under 38 U.S.C. 1725A and 1730A.

* * * * *

■ 2. Amend § 17.108 by adding paragraphs (d)(14) and (g) and the

information collection control number to the end of the section to read as follows:

§ 17.108 Copayments for inpatient hospital care and outpatient medical care.

* * * * *

(d) * * *

(14) A veteran who meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), for inpatient hospital care or outpatient medical care provided on or after January 5, 2022. To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation described in paragraphs (d)(14)(i) through (vi) of this section:

(i) Documentation issued by a federally recognized Indian Tribe that shows that the veteran is a member of the Tribe;

(ii) Documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(iii) Documentation showing that the veteran is an Eskimo or Aleut or other Alaska Native;

(iv) Documentation issued by the Department of Interior (DOI) showing that the veteran considered by DOI to be an Indian for any purpose;

(v) Documentation showing that the veteran is considered by the Department of Health and Human Services (HHS) to be an Indian under that Department's regulations; or

(vi) Documentation showing that the veteran resides in an urban center and meets one or more of the following criteria:

(A) Irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(B) Is an Eskimo or Aleut or other Alaska Native;

(C) Is considered by the Department of Interior to be an Indian for any purpose; or

(D) Is considered by HHS to be an Indian under that Department's regulations.

* * * * *

(g) *Retroactive copayment reimbursement.* After VA determines that the documentation submitted by the veteran meets the criteria in paragraph (d)(14) of this section and VA updates the veteran's record to reflect the veteran's status as an Indian or urban Indian, VA will reimburse veterans exempt under paragraph (d)(14) for any copayments that were paid to VA for inpatient hospital care and outpatient medical care provided on or after January 5, 2022 if they would have been exempt from making such copayments if paragraph (d)(14) had been in effect.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

■ 3. Amend § 17.110 by adding paragraphs (c)(14) and (d) and the information collection control number to the end of the section to read as follows:

§ 17.110 Copayments for medication.

* * * * *

(c) * * *

(14) A veteran who meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), for medications provided on or after January 5, 2022. To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation described in paragraphs (c)(14)(i) through (vi) of this section:

(i) Documentation issued by a federally recognized Indian Tribe that shows that the veteran is a member of the Tribe;

(ii) Documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(iii) Documentation showing that the veteran is an Eskimo or Aleut or other Alaska Native;

(iv) Documentation issued by the Department of Interior (DOI) showing that the veteran is considered by DOI to be an Indian for any purpose;

(v) Documentation showing that the veteran is considered by the Department of Health and Human Services (HHS) to be an Indian under that Department's regulations; or

(vi) Documentation showing that the veteran resides in an urban center and

meets one or more of the following criteria:

(A) Irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(B) Is an Eskimo or Aleut or other Alaska Native;

(C) Is considered by DOI to be an Indian for any purpose; or

(D) Is considered by HHS to be an Indian under that Department's regulations.

(d) *Retroactive copayment reimbursement.* After VA determines the submitted documentation meets paragraph (c)(14) of this section and updates the veteran's record to reflect the veteran's status as an Indian or urban Indian, VA will reimburse veterans exempt under paragraph (c)(14) for any copayments that were paid to VA for medications provided on or after January 5, 2022, if they would have been exempt from making such copayments if paragraph (c)(14) had been in effect.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

■ 4. Amend § 17.111 by adding paragraphs (f)(11) and (g) and the information collection control number to the end of the section to read as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(f) * * *

(11) A veteran who meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), is exempt from copayments for noninstitutional extended care including adult day health care, noninstitutional respite care, and noninstitutional geriatric evaluation provided on or after January 5, 2022. To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation described in paragraphs (f)(11)(i) through (vi) of this section:

(i) Documentation issued by a federally recognized Indian Tribe that shows that the veteran is a member of the Tribe;

(ii) Documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including

those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(iii) Documentation showing that the veteran is an Eskimo or Aleut or other Alaska Native;

(iv) Documentation issued by the Department of Interior (DOI) showing that the veteran is considered by DOI to be an Indian for any purpose;

(v) Documentation showing that the veteran is considered by the Department of Health and Human Services (HHS) to be an Indian under that Department's regulations; or

(vi) Documentation showing that the veteran resides in an urban center and meets one or more of the following criteria:

(A) Irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(B) Is an Eskimo or Aleut or other Alaska Native;

(C) Is considered by DOI to be an Indian for any purpose; or

(D) Is considered by HHS to be an Indian under that Department's regulations.

(g) *Retroactive copayment reimbursement.* After VA determines the submitted documentation meets paragraph (f)(11) of this section and updates the veteran's record to reflect the veteran's status as an Indian or urban Indian, VA will reimburse veterans exempt under paragraph (f)(11) for any copayments that were paid to VA for adult day health care, non-institutional respite care, and non-institutional geriatric evaluation provided on or after January 5, 2022, if they would have been exempt from making such copayments if paragraph (f)(11) had been in effect.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

■ 5. Amend § 17.4600 by revising paragraph (d)(1) and adding paragraph (d)(4) and the information collection control number to the end of the section to read as follows:

§ 17.4600 Urgent care.

* * * * *

(d) * * *

(1) Except as provided in paragraphs (d)(2) through (4) of this section, an

eligible veteran, as a condition for receiving urgent care provided by VA under this section, must agree to pay VA (and is obligated to pay VA) a copayment of \$30:

* * * * *

(4)(i) If an eligible veteran meets the definition of Indian or urban Indian, as defined in 25 U.S.C. 1603(13) and (28), they are exempt from copayments for all urgent care visits. To demonstrate that they meet the definition of Indian or urban Indian, the veteran must submit to VA any of the documentation described in paragraphs (d)(4)(i)(A) through (F) of this section:

(A) Documentation issued by a federally recognized Indian Tribe that shows that the veteran is a member of the Tribe;

(B) Documentation showing that the veteran, irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(C) Documentation showing that the veteran is an Eskimo or Aleut or other Alaska Native;

(D) Documentation issued by the Department of Interior (DOI) showing that the veteran is considered by DOI to be an Indian for any purpose;

(E) Documentation showing that the veteran is considered by the Department of Health and Human Services (HHS) to be an Indian under that Department's regulations; or

(F) Documentation showing that the veteran resides in an urban center and meets one or more of the following criteria:

(1) Irrespective of whether they live on or near a reservation, is a member of a Tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member;

(2) Is an Eskimo or Aleut or other Alaska Native;

(3) Is considered by DOI to be an Indian for any purpose; or

(4) Is considered by HHS to be an Indian under that Department's regulations.

(ii) After VA determines the submitted documentation meets paragraph (d)(4)(i) of this section and updates the veteran's record to reflect the veteran's status as an Indian or

urban Indian, VA will reimburse eligible veterans exempt under paragraph (d)(4)(i) for any copayments that were paid to VA for urgent care visits provided on or after January 5, 2022, if they would have been exempt from making such copayments if paragraph (d)(4)(i) had been in effect.

* * * * *

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900–TBD.)

[FR Doc. 2023–06954 Filed 4–3–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0671; FRL–10568–01–OCSPP]

Deltamethrin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of deltamethrin in or on the raw agricultural commodities, Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E and Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 4, 2023. Objections and requests for hearings must be received on or before June 5, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0671, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The 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 and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Daniel Rosenblatt, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; email address: RDNRNotices@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2022-0671 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before June 5, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket.

Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2022-0671, by one of the following methods:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/send-comments-epa-dockets>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/>.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 30, 2022 (87 FR 52868) (FRL-9410-04-OCSP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E8933) by Bayer CropScience, 800 N Lindbergh Blvd., St. Louis, MO 63141. The petition requested that 40 CFR 180.435 be amended by establishing tolerances without U.S. Registration for residues of deltamethrin, (S)- α -cyano-3-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-, in or on the raw agricultural commodity, Crop Subgroup 6C (Pea and bean, dried, shelled, except soybean) at 0.07 parts per million (ppm). That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, <https://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is establishing tolerances for two subgroups in the recently revised Legume vegetable crop group 6-22 instead of Crop Subgroup 6C (Pea and bean, dried, shelled, except soybean) as requested by the petitioner.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for deltamethrin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with deltamethrin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicology database for deltamethrin is complete except for the subchronic inhalation study which the Hazard Science and Policy Council (HASPOC) recommended to require (TXR 0058335, Z. Staley, 09/30/2022).

Deltamethrin is a member of the pyrethroid class of insecticides. Pyrethroids have historically been classified into two groups, Type I and Type II, based on chemical structure and toxicological effects. Deltamethrin is a Type II pyrethroid. Type II pyrethroids, which contain an alpha-cyano moiety, produce a syndrome in rats that includes pawing, burrowing,

salivation, hypothermia, and coarse tremors leading to choreoathetosis (CS-syndrome). The adverse outcome pathway (AOP, identified using a weight-of-evidence approach based on the Bradford-Hill criteria) shared by pyrethroids involves the ability to interact with voltage-gated sodium channels (VGSCs) in the central and peripheral nervous systems, leading to changes in neuron firing and ultimately, neurotoxicity.

Deltamethrin has been evaluated for a variety of effects in experimental toxicity studies. Neurotoxicity was observed throughout the database, and effects were seen across species, sexes, exposure durations, and routes of administration. Clinical signs characteristic of Type II pyrethroids, such as increased salivation, altered mobility/gait, and tremors, were seen in experimental toxicology studies including neurotoxicity studies (acute and subchronic) in rats, subchronic and chronic studies in dogs and rats, and developmental and reproduction studies in rats. In addition to the clinical signs noted above, increased sensitivity to external stimuli, abnormal vocalization, and decreased fore- and hind-limb grip strength were commonly observed in the database.

Deltamethrin did not have any adverse effects on fetuses or offspring in the prenatal developmental studies in rats and rabbits, therefore there was no evidence of quantitative or qualitative susceptibility in these studies. However, qualitative susceptibility was observed at high doses in the developmental neurotoxicity (DNT) and 2-generation reproduction studies because the effects in the offspring were more severe than the maternal effects. In the DNT study, an increased incidence of vocalization when handled was observed during FOB observations on PND 4 for male pups and decreased pre- and post-weaning body weight was observed in pups of both sexes. In maternal animals, only decreased body weight and body weight gain were observed, and no adverse FOB effects were observed despite having undergone the same neurological measurements as the pups, including FOB analysis. In the 2-generation reproduction study, treatment-related effects in the parental animals at the high dose were limited to lesions on the head, neck, or forelimbs, and alopecia in the males and ataxia and hypersensitivity in the females during gestation. At the high dose in the F1 generation, there were increased pup mortalities (PND 8–14) and clinical findings observed early in the post-weaning period (*i.e.*, impaired righting reflexes, hyperactivity, splayed limbs,

vocalization, and excessive salivation). There was no increase in mortality or clinical signs in the F2 generation. Decreased body weight was observed in the adult P and F1 generations, and decreased pup weight was observed in both the F1 and F2 pups.

In a 21-day dermal toxicity study, no systemic toxicity was observed up to the limit dose. There was also no toxicity observed following acute dermal exposure to deltamethrin up to a dose of 2,000 mg/kg/day. The dermal absorption value for deltamethrin is 11.3%.

There was no evidence of immunotoxicity in the available studies with deltamethrin.

There was no evidence of carcinogenicity in the combined chronic/carcinogenicity study in rats or the carcinogenicity study in mice. In a battery of mutagenicity studies, there was no evidence of a mutagenic effect.

Specific information on the studies received and the nature of the adverse effects caused by deltamethrin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <https://www.regulations.gov> in document “Deltamethrin Human Health Risk Assessment for the Proposed Tolerances on Vegetable, Legume, Pulse, Bean, Dried Shelled, Except Soybean, Subgroup 6–22E and Vegetable, Legume, Pulse, Pea, Dried Shelled, Subgroup 6–22F, without U.S. Registration” (hereinafter “Deltamethrin Human Health Risk Assessment”) at 29–34 in docket ID number EPA–HQ–OPP–2022–0671.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (PODs) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold

risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks>.

A summary of the toxicological endpoints for deltamethrin used for human risk assessment can be found on pages 17–18 in the “Deltamethrin Human Health Risk Assessment”.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to deltamethrin, EPA considered exposure under the petitioned-for tolerances as well as all existing deltamethrin tolerances in 40 CFR 180.435. EPA assessed dietary exposures from deltamethrin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

Such effects were identified for deltamethrin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2005–2010 National Health and Nutrition Examination Survey, What We Eat in American (NHANES/WWAIA). As to residue levels in food, the acute dietary exposure is partially refined; the residue inputs were a combination of tolerance-level residues, Pesticide Data Program (PDP) monitoring data, and mosquito adulticide residue values. As deltamethrin is registered for use as a mosquito adulticide, residue estimates for the adulticide use were included in the dietary exposure assessment. EPA used percent crop treated (PCT) for some commodities as described below and 100 PCT for the other commodities.

ii. *Chronic exposure.* A chronic dietary risk assessment is not required for deltamethrin because repeated exposure does not result in a POD lower than that resulting from acute exposure. Therefore, the acute dietary risk assessment is protective of chronic dietary risk. However, EPA performed a chronic dietary exposure assessment for use in the aggregate assessment, since there are residential exposures for deltamethrin that need to be aggregated with background exposure from dietary

sources. In the aggregate human health risk assessment, the average or chronic exposure estimates are combined with the appropriate residential exposure estimates and compared to the POD for deltamethrin.

In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2005–2010 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, the chronic dietary exposure is partially refined; the residue inputs consisted of a combination of tolerance level residues, PDP monitoring data, mosquito adulticide residue values, and Food Handling Establishment (FHE) residue values. EPA used percent crop treated (PCT) estimates for some commodities and 100 PCT for the other commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that deltamethrin is not likely to be carcinogenic to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates

used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the dietary assessment, the following PCT assumptions were made:

The maximum PCT estimates used in the acute dietary risk assessment for the following crops that are currently registered for deltamethrin were: apples, 2.5%; carrots, 5%; cucumbers, 5%; soybeans, 2.5%; and watermelons, 10%. In addition, EPA used a value of 9% as an estimate of the percentage of the orange crop that might be imported. EPA assumed 100 PCT for all other commodities included in the acute assessment.

The average PCT estimates used in the chronic dietary risk assessment for the following crops that are currently registered for deltamethrin were: apples, 1%; globe artichokes, 5%; carrots, 1%; cotton, 1%; cucumbers, 1%; leeks, 1%; onions, 1%; potatoes, 1%; pumpkins, 2.5%; rapeseed, 2.5%; shallot, 1%; squash, 1%; sunflowers, 5%; and watermelons, 1%. EPA assumed 100 PCT for all other commodities included in the chronic assessment.

In the chronic assessment, for the commodities that are only covered by the FHE tolerance, the assumption was made that there was a 4.65% chance that a food item consumed by a person contained deltamethrin residues as a result of treatment at some point in an FHE.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5%, respectively. The maximum PCT figure is the highest observed maximum value reported within the recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the

Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which deltamethrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for deltamethrin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of deltamethrin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <https://www.epa.gov/science-and-assessing-pesticide-risks/pesticide-risk-assessment>.

The deltamethrin limit of solubility is 0.20 ppb. EPA used 0.20 ppb as the estimated drinking water concentration (EDWC) for both the acute and chronic dietary assessments because the concentration of deltamethrin in water cannot exceed the limit of solubility.

Although a chronic dietary endpoint was not identified for deltamethrin, a chronic dietary exposure assessment was performed to provide background exposure for the aggregation with short-term residual exposure.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

There are no proposed residential uses associated with the proposed use on imported peas and beans. However, deltamethrin is currently registered for the following uses that could result in residential exposures: Indoor (spot, crack and crevice) and outdoor (turf, garden and trees) environments, pet collars, paint preservative, impregnated mosquito net, and wide area mosquito and fly control.

In the previous risk assessment, all residential handler scenarios (adults only) resulted in inhalation risk estimates greater than the LOC (*i.e.*, $MOEs \geq 1,000$), with $MOEs$ ranging from 1,200 to 850,000, which are not of concern. No risk estimates of concern were identified for residential post-application exposure scenarios (children's incidental oral). The $MOEs$ ranged from 290 to 1,500,000 and were greater than the LOC of 100.

Although there are no residential uses associated with the proposed tolerances, the aggregate human health risk assessment was updated to include the additional dietary exposure expected from residues in peas and beans. EPA selected only the most conservative, or worst-case, residential adult and child scenarios to be included in the aggregate estimates, based on the lowest overall MOE (*i.e.*, highest exposure and risk estimates). The adult worst-case residential handler exposure estimate resulted from adults fastening (applying) pet collars treated with deltamethrin to large dogs. The children's (1 to <2 years old) worst-case residential exposure estimate resulted from hand-to-mouth (post-application) exposure to residues from perimeter/spot treatments on carpeting.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/operating-procedures-residential-pesticide>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

The Agency has determined that the pyrethroids and pyrethrins share a common mechanism of toxicity <https://www.regulations.gov>; EPA-HQ-OPP-2008-0489-0006. As explained in that document, the members of this group share the ability to interact with voltage-

gated sodium channels ultimately leading to neurotoxicity. In 2011, after establishing a common mechanism grouping for the pyrethroids and pyrethrins, the Agency conducted a cumulative risk assessment (CRA) which is available at <https://www.regulations.gov>; EPA-HQ-OPP-2011-0746. In that document, the Agency concluded that cumulative exposures to pyrethroids (based on pesticidal uses registered at the time the assessment was conducted) did not present risks of concern. For information regarding EPA's efforts to evaluate the risk of exposure to this class of chemicals, refer to <https://www.epa.gov/used-pesticide-products/registration-review-pyrethrins-and-pyrethroids>.

Deltamethrin is included in the pyrethroids/pyrethrins cumulative risk assessment. No dietary, residential, or aggregate risk estimates of concern have been identified in the single chemical assessment. In the cumulative assessment, residential exposure was the greatest contributor to the total exposure. Dietary exposures make a minor contribution to the total pyrethroid exposure. The dietary exposure assessment performed in support of the pyrethroid cumulative was much more highly refined than that performed for deltamethrin. The minor increase in dietary exposure to deltamethrin residues, as a result of the proposed tolerance, would make an insignificant contribution to cumulative exposure.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Deltamethrin did not have any adverse effects on fetuses or offspring in the prenatal developmental studies in rats and rabbits. However, qualitative susceptibility was observed at high doses in the developmental

neurotoxicity (DNT) and 2-generation reproduction study. In the DNT study, an increased incidence of vocalization when handled was observed during FOB observations on PND 4 for male pups and decreased pre- and post-weaning body weight was observed in pups of both sexes. In maternal animals, only decreased body weight and body weight gain were observed despite undergoing the same neurological measurements as the pups, including FOB analysis. In the 2-generation reproduction study, treatment-related effects in the parental animals at the high dose were limited to lesions on the head, neck, or forelimbs, and alopecia in the males and ataxia and hypersensitivity in the females during gestation. At the high dose in the F1 generation, there were increased pup mortalities (PND 8–14) and clinical findings observed early in the post-weaning period (*i.e.*, impaired righting reflexes, hyperactivity, splayed limbs, vocalization, and excessive salivation). There was no increase in mortality or clinical signs in the F2 generation. Decreased body weight was observed in the adult P and F1 generations, and decreased pup weight was observed in both the F1 and F2 pups.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced from 10X to 1X with the exception of inhalation exposure scenarios, for which the 10X FQPA Safety Factor was retained as a database uncertainty factor. That decision is based on the following findings:

i. The toxicity database for deltamethrin is complete, except for a subchronic inhalation study that HASPOC recommended not to waive (TXR 0058335, Z. Staley, 09/30/2022). Studies that are available to inform the FQPA SF include developmental toxicity studies in rats and rabbits, a reproduction study in rats, an acute neurotoxicity (ACN) study, a subchronic neurotoxicity (SCN) study, and developmental neurotoxicity (DNT) studies.

ii. There is evidence of neurotoxicity in the deltamethrin toxicology database. As with other pyrethroids, deltamethrin causes neurotoxicity from interaction with sodium channels leading to clinical signs of neurotoxicity. These effects are well characterized and adequately assessed by the body of data available to the Agency, therefore, there is no residual uncertainty regarding neurotoxicity.

iii. There were no indications of fetal toxicity in any of the guideline studies, including developmental studies in the

rat and rabbit, a developmental neurotoxicity study in rats, and a 2-generation reproduction study in rats. There was evidence of increased juvenile qualitative susceptibility at high doses observed in both the DNT and 2-generation reproduction studies. In the DNT study, increased vocalization was observed during FOB handling of pups on PND 4 at the same dose where decreased body weight and body weight gain were observed in maternal animals (16.1 mg/kg/day). No findings were observed in the maternal animals during FOB handling in the DNT. In the 2-generation reproduction study, the P generation showed limited clinical signs of neurotoxicity and decreased body weights at the highest dose tested (21.2/23.5 mg/kg/day, M/F). Effects observed in the F1 generation at the same dose included decreased pup weight, increased pup mortality between PND 8–14, increased pup mortality within the first 8 days post-weaning, and additional clinical signs of neurotoxicity not observed in the parental generation. The increased mortality and additional clinical signs were considered evidence of qualitative sensitivity in juveniles.

iv. *There are no residual uncertainties identified in the exposure databases.* The dietary exposure assessments are based on a combination of robust monitoring data and field trial residue levels that account for parent and metabolites of concern, processing factors, and percent crop treated assumptions. Furthermore, conservative, upper-bound assumptions were used to determine exposure through drinking water and residential sources, such that these exposures have not been underestimated.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to deltamethrin will occupy 26% of the aPAD for children 3 to 5 years old, the

population group receiving the greatest exposure.

Acute aggregate risk of exposure to deltamethrin results from exposure to residues in food and drinking water alone. Therefore, acute aggregate risk estimates are equivalent to the acute dietary risk estimates, which are below the level of concern of 100% of the aPAD. Acute aggregate risk estimates are not of concern for the general U.S. population or any population subgroup.

2. *Chronic risk.* Based on the data summarized in Unit III.A., there is no increase in hazard with increasing dosing duration. As a result, there is no increase in toxicity with repeated/chronic dietary exposures; therefore, the acute aggregate assessment is protective of potential chronic aggregate exposures.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Deltamethrin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to deltamethrin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in an aggregate MOEs of 260 for children 1 to 2 years old. Because this MOE is greater than the LOC of 100 for dietary and children's hand-to-mouth exposure, the short-term aggregate risk estimate for children 1 to 2 years old is not of concern. The combined short-term food, water and residential exposures for adults results in an aggregate risk index (ARI) of 1.2, which is greater than EPA's level of concern of an ARI of 1, so these risks are also not of concern. EPA used an ARI approach for the adult short-term risk because the level of concern for dietary exposure (100) is different than the level of concern for inhalation exposure (1,000).

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because toxicity does not increase with repeated dosing, intermediate-term risk is covered by the assessments for short-term exposures.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two

adequate rodent carcinogenicity studies, deltamethrin is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to deltamethrin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with electron capture detection (GC/ECD) method) is available in PAM Volume II (Section 180.422) is available to enforce the tolerance expression. Two other GC/ECD methods are also available for enforcing deltamethrin tolerances in plant commodities.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: residuemethods@epa.gov.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established MRLs for deltamethrin in or on the raw or processed agricultural commodities, Pulses (group) at 1 ppm. The Codex MRL is much higher and is based on a post-harvest use. EPA cannot harmonize the tolerance of 0.07 ppm because of the large difference in the values which would limit its usefulness as an enforcement tool. However, EPA will be harmonizing with the Canadian MRL of 0.07 ppm for the equivalent subgroups.

C. Revisions to Petitioned-For Tolerances

FFDCA section 408(d)(4)(A)(i) permits the Agency to finalize a tolerance that varies from that sought by the petition. EPA is establishing tolerances for two subgroups in the recently revised Legume vegetable crop group 6–22 instead of Crop Subgroup 6C (Pea and bean, dried, shelled, except soybean) (See Pesticides; Expansion of Crop Grouping Program VI, (87 FR 57627) (September 21, 2022) (FRL–5031–13–OCSPP). The revised subgroups “Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E” and “Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F” include all commodities in the original crop subgroup 6C while also aligning with the updated crop groups.

V. Conclusion

Therefore, tolerances are established for residues of deltamethrin, (S)- α -cyano-3-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-, in or on the raw or processed agricultural commodities, Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E and Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F at 0.07 ppm. As a housecleaning activity, EPA is removing the first footnote to the table in paragraph (a)(1) because it is unnecessary and included in the second footnote.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 29, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCE AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.435, amend paragraph (a)(1) by:

■ a. Adding a heading to the table;

■ b. Adding in alphabetical order to the table entries for “Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E¹” and “Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F¹”;

■ c. Revising the table footnotes.

The additions and revision read as follows:

§ 180.435 Deltamethrin; tolerances for residues.

(a) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Vegetable, legume, pulse, bean, dried shelled, except soybean, subgroup 6–22E ¹	0.07
Vegetable, legume, pulse, pea, dried shelled, subgroup 6–22F ¹	0.07
* * * * *	

* There are no U.S. registrations.

¹ There are no U.S. registrations as of April 4, 2023.

* * * * *

[FR Doc. 2023–06939 Filed 4–3–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2022-0061;
FXES1113090FEDR-224-FF09E22000]

RIN 1018-BF61

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the Guam Kingfisher, or Sihek, on Palmyra Atoll, USA**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are releasing (meaning introducing) the Guam kingfisher (*Todiramphus cinnamominus*), known locally as the sihek, on Palmyra Atoll as an experimental population under the Endangered Species Act of 1973, as amended (Act). Currently, sihek exists only in captivity and has been extinct in the wild for more than 30 years. The introduction on Palmyra Atoll is outside sihek's historical range because its primary habitat within its native range on Guam has been indefinitely altered by the accidental introduction of the predatory brown treesnake (*Boiga irregularis*) in the mid-twentieth century. Tools to manage brown treesnakes at a landscape level are beginning to be deployed, but it will take time before these tools are effective enough for the reintroduction of sihek on Guam. We anticipate significant declines in sihek population that threaten the species' viability before reintroduction to Guam could occur. The introduction of sihek to Palmyra Atoll is not intended to be a permanent introduction that would support a self-sustaining population; rather, it is intended to facilitate the gathering of information and analysis to optimize efforts for reestablishment of the species on Guam once brown treesnakes can be sufficiently controlled at a landscape scale. The introduction of sihek to Palmyra Atoll is also likely to help increase the global population of this extinct-in-the-wild species in advance of a reintroduction effort on Guam. We classify this population as a nonessential experimental population (NEP) under the Act and provide regulations for the take of sihek within the NEP area. The best available data indicate the introduction of sihek to Palmyra Atoll is biologically feasible and will promote the conservation of the species.

DATES: This final rule is effective May 4, 2023.**ADDRESSES:** Comments and materials we received in response to our proposed rule, as well as supporting documents we used in preparing this final rule, are available on <https://www.regulations.gov> under Docket No. FWS-R1-ES-2022-0061.**FOR FURTHER INFORMATION CONTACT:** Megan Laut, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Rm 3-122, Honolulu, HI 96850; telephone 808-779-9939. 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:****Executive Summary**

Why we need to publish a rule. Under section 10(j) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), a population of a threatened or endangered species may be designated as an experimental population prior to its reintroduction. Experimental populations can be designated only by issuing a rule (hereafter referred to as a "10(j) rule").

What this document does. This rule will designate sihek (*Todiramphus cinnamominus*) introduced to Palmyra Atoll as a nonessential experimental population on the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) with a rule set forth at 50 CFR 17.84.

The basis for our action. Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that introducing sihek to Palmyra Atoll, with the regulatory provisions in this final rulemaking, will further the conservation of the species. The nonessential experimental population status is appropriate for the introduced population because we have determined that it is not essential to the continued existence of the species in the wild.

In the making of our finding that this action will further the conservation of the species, we evaluate any possible adverse effects on the captive population of sihek, the likelihood that any such experimental population will become established and survive in the foreseeable future, the relative effects

that establishment of an experimental population will have on the recovery of the species, and the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area. This rule also identifies the boundaries of the experimental population, explains our rationale for why the population is not essential to the continued existence of the species, describes management restrictions, protective measures, or other special management concerns of that population, and explains our rationale for determining that the habitat for sihek has been indefinitely altered or destroyed, currently a requirement under section 10(j) of the Act, and our regulations in title 50 CFR 17.81, for introducing a species outside its historical range.

Peer review and public comment. To ensure that our findings were based on scientifically sound data, assumptions, and analysis—and consistent with our Policy for Peer Review in Endangered Species Act Activities (59 FR 34270, July 1, 1994), and additional guidance (USFWS in litt. 2016)—we invited six objective and independent specialists to review our proposed rule. We received three responses. We also considered all comments and information received during the public comment period. All comments received during the peer review process and the public comment period have been incorporated into this final rule or are addressed below in Summary of Comments and Recommendations.

Background

On August 31, 2022, we published in the **Federal Register** a proposed rule to establish a nonessential experimental population of sihek on Palmyra Atoll (87 FR 53429, August 31, 2022). The comment period on the proposed rule was open for 30 days, through September 30, 2022. Comments on the proposed rule are addressed below under Summary of Comments and Recommendations.

Statutory and Regulatory Framework for Experimental Populations

Species listed as endangered or threatened are afforded protection primarily through the prohibitions in section 9 of the Act. Section 9 of the Act, among other things, prohibits take of endangered wildlife. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal

interagency cooperation to conserve federally listed species and protect designated critical habitat. Section 7 mandates that Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The Act was amended in 1982 to include section 10(j), which allows for the designation of reintroduced populations of listed species as “experimental populations.” The provisions of section 10(j) were enacted to ameliorate concerns that reintroduced populations will negatively impact landowners and other private parties, by giving the Secretary greater regulatory flexibility and discretion in managing the reintroduced species to encourage recovery in collaboration with partners, especially private landowners. Under section 10(j) of the Act, and our regulations in title 50 of the Code of Federal Regulations at 50 CFR 17.81, the Service may designate an endangered or threatened species that has been or will be released within its probable historical range as an experimental population. The Service may also designate an experimental population for an endangered or threatened species outside of the species’ probable historical range in extreme cases when the Director of the Service finds that the primary habitat of the species within its historical range has been unsuitably and irreversibly altered or destroyed. All experimental populations are classified as “nonessential” unless we determine that the loss of the experimental population would be likely to appreciably reduce the likelihood of the survival of the species in the wild. The sihek population we are establishing on Palmyra Atoll is designated as nonessential.

The nonessential experimental population (NEP) designation allows us to develop tailored “take” prohibitions that are necessary and advisable to provide for the conservation of the species. The protective regulations adopted for an experimental population in a section 10(j) rule contain the applicable prohibitions and exceptions for that population and apply to all

areas described for the nonessential population.

Section 7(a)(2) of the Act requires that Federal agencies, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the population is located within a National Wildlife Refuge or unit of the National Park Service. When NEPs are located outside of a National Wildlife Refuge or National Park Service unit, for the purposes of section 7 we treat the population as proposed for listing and only sections 7(a)(1) and 7(a)(4) of the Act apply. In these instances, a section 10j rule provides additional flexibility in managing the nonessential population because Federal agencies are not required to consult with us under section 7(a)(2) for an NEP. Section 7(a)(1) requires Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we do not designate critical habitat in areas where we establish an NEP.

Before authorizing the release as an experimental population of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find that the release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider the following factors (see 50 CFR 17.81(b)):

(1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere (see Donor Stock Assessment and Effects on Donor Population, below);

(2) the likelihood that any such experimental population will become established and survive in the foreseeable future (see Likelihood of Population Establishment and Survival, below);

(3) the relative effects that establishment of an experimental population will have on the recovery of the species (see Importance of the NEP to Recovery Efforts, below); and

(4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area (see Management, below).

Furthermore, as set forth at 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

(1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population (see Location and Boundaries of the NEP Area, below);

(2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild (see Is the Experimental Population Essential or Nonessential?, below);

(3) management restrictions, protective measures, or other special management concerns for that population, which may include, but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations (see Management, below; and

(4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species (see Monitoring and Evaluation, below).

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Legal Status of the Species and Previous Federal Actions

We listed sihek as an endangered species under the Act on August 27, 1984 (49 FR 33881). At the time of listing, sihek was known as the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*). On June 23, 2015 (80 FR 35860), we updated our List of Endangered and Threatened

Wildlife (50 CFR 17.11) to reflect new taxonomic information indicating that the Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*) is now considered the Guam kingfisher (*Todiramphus cinnamominus*). Throughout this document, we refer to the species as sihek because that is the locally used common name on Guam. We designated critical habitat for sihek on October 28, 2004 (69 FR 62944), consisting of 376 ac (153 ha) on northern Guam. We finalized the Native Forest Birds of Guam and Rota of the Commonwealth of the Northern Mariana Islands Recovery Plan in 1990 and the Revised Recovery Plan for Sihek or Guam Micronesian Kingfisher (*Halcyon cinnamomina cinnamomina*) in 2008 (73 FR 67541, November 14, 2008).

Biological Information

Species Description

Sihek is a sexually dimorphic (the sexes are outwardly different in appearance) forest kingfisher (Baker 1951, p. 229). The adult male has a brown head, neck, upper back, and underparts. A black line extends around the nape (back of the neck), and the eye ring is black. The lower back, lesser and underwing coverts, and shoulder feathers are greenish-blue, and the tail is blue. The bill is black. The female's markings are similar to the adult male, but the upper breast, chin, and throat are paler, and the remaining underparts are white instead of cinnamon. Sihek are relatively small, about 8 inches (in) (20 centimeters (cm)) in length (Del Hoyo et al. 2001, p. 220). Adult sihek range in weight from 1.7–3.0 ounces (oz) (53 to 85 grams (g)) (Baker 1951, p. 228; Jenkins 1983, p. 21).

Historical and Current Range

Sihek is a nonmigratory species endemic to Guam and historically occurred in all habitats throughout Guam except pure savanna and wetlands (Marshall 1949, p. 210, Baker 1951 p. 229; Jenkins 1983, pp. 22–23). They were described as “fairly common” by Baker (1951, p. 229). However, the population declined rapidly in the mid-twentieth century due primarily to predation by the brown treesnake. The last remaining wild sihek were taken into captivity between 1984 and 1986, and sihek were considered extinct in the wild by 1988 (Wiles et al. 2003, p. 1357). For more than 30 years, the species has existed only in captivity, as discussed further in the *Recovery Efforts to Date* section, below.

Life Cycle

Sihek are socially monogamous, and breeding activity appears to be concentrated from December to July (Marshall 1949, p. 210; Baker 1951, p. 228; Jenkins 1983, p. 23). They nest in cavities, with nests documented in a variety of trees, including *Ficus* spp. (banyan), *Cocos nucifera* (coconut), *Artocarpus* spp. (breadfruit), *Pisonia grandis* (umumu), and *Tristiropsis obtusangula* (faniok) (Baker 1951, p. 228; Jenkins 1983, p. 24; Marshall 1989, p. 473). Both male and female sihek incubate eggs and brood and feed nestlings (Jenkins 1983, p. 24). Eggs are white, and reported clutch sizes from wild populations (n=3) were either one or two eggs (Baker 1951, p. 228; Jenkins 1983, p. 24; Marshall 1989, p. 474). Incubation, nestling, and fledgling periods for sihek in the wild are unknown. However, incubation and nestling periods of captive birds averaged 22 and 33 days, respectively (Bahner et al. in litt. 1998, p. 21).

Sihek feed entirely on animal matter including skinks (Scincidae), geckos (Gekkonidae), various insects, segmented worms (Annelida), and hermit crabs (*Coenobita* spp.) (Marshall 1949, p. 210; Baker 1951, pp. 228–229; Jenkins 1983, pp. 23–24). Seale (1901, p. 45) also reported that sihek were known to prey on the chicks of domestic fowl, and Marshall (1949, p. 210) noted fish scales in the stomach contents of collected sihek. They typically forage by perching motionless on exposed branches or telephone lines and swooping down to capture prey off the ground with their bill (Jenkins 1983, pp. 23–34). They will also capture prey off nearby foliage and have been observed gleaning insects from bark (Maben 1982, p. 78).

Habitat Use

Relatively little is known about the habitat use of sihek. Mature forests with appropriate nest sites were probably an important component for successful reproduction and survival. Sihek are cavity nesters and apparently requires large, standing dead trees. Nest trees were reported as averaging 43 centimeters (17 inches) in diameter (Marshall 1989, p. 475). Sihek also appear to require diverse vegetative structure capable of providing a wide range of both invertebrate and vertebrate prey as well as exposed perches and areas of open ground for foraging (USFWS 2002, p. 63739). Good-quality sihek habitat would therefore provide a combination of closed canopy forest with large, standing dead trees for nesting, and areas of open understory or

forest edges for foraging (Jenkins 1983, pp. 22–23; Marshall 1989, pp. 475–476; USFWS 2002, p. 63739).

Movement Ecology

Records of distributions and intraspecific territorial behaviors for sihek suggest they maintained exclusive year-round territories (Jenkins 1983, pp. 24–25). Little else is known about their movement ecology. On the island of Pohnpei, Micronesian kingfishers (*Todiramphus reichenbachii*), a species from the same genus as sihek, demonstrated an average territory size of 8.1 hectares (ha) (20 acres (ac)) and showed stable boundaries within and between years (Kesler and Haig 2007, p. 387); birds dispersing from their home territory were observed to establish new territories a maximum distance of 4,501 feet (1,372 meters) from the original site (Kesler and Haig 2007, p. 389). Sihek is an island endemic that has not been observed flying over open ocean.

Causes of Decline and Threats

The primary cause of sihek's extinction in the wild was due to predation by the introduced brown treesnake (USFWS 2008, p. 21). Individuals of this invasive species probably arrived on Guam prior to 1950 as stowaways on shipping materials (Savidge 1987, p. 662). Brown treesnakes were likely introduced in southern Guam and expanded their range, reaching the northernmost point of the island by 1968 (Savidge 1987, p. 663). Sihek were last recorded from southern Guam in the 1970s (Drahos 1977, pp. 153–154), and by 1985, Marshall (1989, p. 476) reported only 30 sihek in the northern part of the island. Sihek were considered extinct in the wild by 1988 (Wiles et al. 2003, p. 1357). The continued island-wide presence of brown treesnakes on Guam currently precludes consideration of Guam as a viable reintroduction site for sihek. Future reintroductions to Guam could be considered only if brown treesnakes were suppressed or eradicated at a scale that would allow for the survival of a reintroduced population of sihek.

Other factors that likely impacted sihek on Guam include predation by feral cats (*Felis catus*), rats (*Rattus* spp.), and monitor lizards (*Varanus tsukamotoi*), habitat degradation from development and typhoons, human persecution, contaminants, and competition with and harassment by black drongos (*Dicrurus macrocercus*) (USFWS 2008, pp. 16–17). Our Revised Recovery Plan for Sihek or Guam Micronesian Kingfisher (USFWS 2008,

pp. 16–26) provides further description of these threats.

Recovery Efforts to Date

Criteria for reclassifying sihek from an endangered to threatened species (“downlisting”) include the establishment of two subpopulations on Guam (one in the north and one in the south) of at least 500 individuals each that are stable to increasing over at least 5 consecutive years; the protection and management of habitat sufficient to achieve the population criteria; and the management of brown treesnakes and other introduced predators at levels sufficient to meet the population criteria. The criteria to delist (remove protections of the Act for) the sihek include two subpopulations on Guam of at least 1,000 individuals each (one in the north and one in the south) that are stable or increasing, with sufficient habitat and predator control to support the population criteria (USFWS 2008, pp. 40–43). Our recovery plan acknowledged that the interim step of introducing sihek outside of its historical range may be necessary before we are able to reestablish sihek populations on Guam (USFWS 2008, p. 40).

Habitat Protection

Over the past 30 years, the Service has worked with a number of stakeholders to provide habitat protection in support of recovering Guam’s native species. The habitat protections described below were intended for federally listed species on Guam in anticipation of the eventual ability to control brown treesnakes and allow the reintroduction of sihek and other locally extinct species. In 1993, the U.S. Air Force, U.S. Navy, and the Service entered into a memorandum of understanding to create the Guam National Wildlife Refuge. As per the terms of the memorandum of understanding, the two military branches entered into cooperative agreements with the Service in 1994 to designate Department of Defense lands as overlay units in the Guam National Wildlife Refuge (*i.e.*, these overlay units of Refuge lands are under the jurisdiction of the Department of Defense but managed by the Service as part of the Refuge). Currently the Guam National Wildlife Refuge includes 152 ha (376 ac) of lands under the jurisdiction of the Service and 9,300 ha (22,980 ac) of overlay lands under the jurisdiction of the U.S. Navy and U.S. Air Force, and all are managed by the Service as the Refuge.

Additionally, the Government of Guam established four reserves for habitat protection. These lands are

under the jurisdiction of the CHamoru Land Trust Commission of the Government of Guam. The Commission has the authority to change the status of these lands to non-conservation areas as they deem appropriate. Please see the Revised Recovery Plan for Sihek or Guam Micronesian Kingfisher (USFWS 2008, pp. 33–37) for further description and maps of the Department of Defense and Government of Guam protected areas.

More recently, the Department of Defense and the Service entered into two agreements to protect or manage habitat for sihek and other federally listed species on Guam. A 2020 memorandum of understanding between Joint Region Marianas and the Service outlined a mutual understanding regarding the intentions and future considerations of a Department of Defense readiness and environmental protection integration initiative to address conservation of upland vegetation communities for sihek as well as other federally listed species on Guam (USFWS 2020). In 2015 a memorandum of agreement between the Department of the Navy and the Service designated 2,118 ha (5,234 ac) of habitat for the recovery and survival of sihek in Northern Guam in response to loss of habitat described in the Service’s 2015 Marine Corps Relocation Biological Opinion (USFWS 2015, entire).

Brown Treesnake Control

We currently lack adequate tools to eradicate brown treesnakes from Guam, and the continued presence of brown treesnakes throughout the landscape prevents the successful reestablishment of sihek on Guam in the foreseeable future. However, there is incremental progress in addressing this threat. Since 2010, the interagency Brown Treesnake Technical Working Group has advanced landscape-scale brown treesnake suppression capabilities with the development and refinement of an aerial delivery system for toxicant baiting, comprising an automated bait manufacturing system and an automated dispensing module for applying baits from aircraft. Aerial toxicant baiting has recently been evaluated in both fenced and non-fenced 55-ha (136-ac) sites; brown treesnake suppression, but not eradication, has been validated using this technique (Siers et al. in litt. 2020, p. 4). Further, simulated aerial baiting for brown treesnake eradication within a 5-ha (12-ac) brown treesnake exclusion area indicates that some brown treesnake size classes do not consume baits and additional control tools are needed to achieve suppression

objectives and/or eradication (Siers et al. in litt. 2020, p. 4).

Island-wide eradication of invasive vertebrates has been achieved on 965 islands for various taxonomic groups (see Keitt et al. 2011, <http://diise.islandconservation.org/>); however, snake eradication efforts are rare, and there is only one other documented ongoing effort to eradicate snakes from an island (<http://diise.islandconservation.org/>). Additional technological and methodological advancements along with community engagement are still needed to achieve landscape-scale eradication of brown treesnakes on Guam. The aerial delivery system tools are operational, but full operational implementation of the aerial suppression program will require further understanding of site-specific effects of the technology and development of efficient monitoring protocols. Therefore, while technological advances to control brown treesnakes show promise as a tool, they currently do not control snakes to a level sufficient to allow the return of sihek to Guam before significant declines in the captive population of sihek are likely to occur, discussed further below. Thus, interim conservation measures for sihek are necessary to reduce its extinction risk while brown treesnake suppression and eradication methods are perfected and implemented.

Captive-Breeding Efforts

In 1983, the Association of Zoos & Aquariums (AZA) initiated the Guam Bird Rescue Project in response to the widespread decline of Guam’s native birds. Sihek was one of the Guam birds selected under this program for captive (*ex situ*) conservation efforts (Hutchins et al. in litt. 1996, p. 4). Between 1984 and 1986, 29 sihek were translocated from Guam to several zoos in the mainland United States. The program was established with the intent of being a short-term rescue but due to the continued presence of brown treesnakes on Guam, ultimately led to an ongoing breeding program. By 1990, the *ex situ* population increased to 61 sihek in 12 mainland zoos. Currently, an estimated 139 sihek are held at 25 AZA institutions and in a facility at the Guam Department of Agriculture’s Division of Aquatic and Wildlife Resources (DAWR) (Newland, S., in litt. 2022a).

A Species Survival Plan Program for sihek, developed by the AZA, has been in place since 1986. In general, Species Survival Plan Programs are established to oversee the population management of species within AZA-accredited facilities. The plans typically include a

population studbook and an annual breeding and transfer plan to ensure the genetic and demographic health of the population. The donor population is carefully managed through the Species Survival Plan Program to ensure the population's long-term viability.

Sihek are relatively difficult to manage in zoos because of their aggressive territorial behavior and moderately expensive diet. In addition, little forward progress toward a recovery program in the wild has led to few new institutions willing to hold or breed the species, which ultimately limits population growth. The small founding population, as well as the limited ability to increase the population beyond its current size, has serious implications for long-term survival of sihek.

Two separate population viability analyses (PVAs) demonstrated rapid declines in the population under current conditions (Johnson et al. in litt. 2015, p. 8; Trask et al. 2021, p. 6). Without changes to management practices that increase reproduction (*i.e.*, reproductive output stays the same), the sihek population is predicted to decline to below 100 individuals by the year 2040 (Johnson et al. 2015, p. 8); and with a slight decrease in reproductive output of just 7 percent, the population is projected to decrease to 25 individuals by 2040 (Johnson et al. 2015, p. 9). One of the PVAs incorporated an inbreeding coefficient into their models and demonstrated, among other things, a rapid decline in the population without an increase in reproductive output such that in 50 years the mean population size is projected to decline to approximately 30 individuals (Trask et al. 2021, *entire*). The *ex situ* population of sihek is therefore sensitive to even slight reductions in reproductive output and is at a heightened risk of extinction due to small population dynamics in their existing limited breeding and holding space. However, a small increase in average annual reproductive output (from 2.54 hatchlings per female per year to 2.70 hatchlings per female per year) could support long-term (50-year) sihek population viability as well as a release program (Trask et al. 2021, p. 6).

Breeding facilities for sihek are currently at capacity. Without the ability to release sihek, the species' population growth is constrained. The sihek's current small population size puts the species at risk from stochastic environmental events (*e.g.*, disease outbreaks in the *ex situ* population or changes in the ability of facilities to house and breed sihek) and demographic threats (*e.g.*, sex-ratio biases, as well as from genetic threats

from increasing rates of loss of genetic diversity and accumulation of inbreeding). Further, maintaining the species entirely under captive environmental conditions puts the species at risk from genetic adaptations to captivity (Frankham 2008, *entire*). This situation could result in individuals having reduced fitness under wild conditions and could negatively impact the success of efforts to ultimately recover the species on Guam.

Reintroduction

No efforts have been made to reintroduce sihek to its native range on Guam due to the continued presence of brown treesnakes, the primary threat that caused its extinction in the wild. Further, until recently, the *ex situ* population of sihek was not large enough to sustain a release program. Analyses have shown that, with captive management aimed at increasing reproductive output, the *ex situ* population can support the releases for an experimental population on Palmyra Atoll (Trask et al. 2021 p. 7).

Location and Boundaries of the NEP Area

The NEP area for sihek occurs outside the species' historical range and encompasses the 618 ac (250 ha) of emergent land distributed among the 25 islands that make up Palmyra Atoll (Collen et al. 2009, p. 712), and inclusive of the lagoons surrounding those islands. The islands vary in size from approximately 0.24 to 242 ac (0.1 to 97.9 ha). Palmyra Atoll is located in the Northern Line Islands, approximately 1,000 miles (1,609 km) south of Honolulu, Hawaii, and 3,647 miles (5,869 km) east of Guam (5°53' N latitude, 162°05' W longitude). Palmyra Atoll is considered a wet atoll with high humidity, typically greater than 90 percent, and temperatures between 75 and 81 °F (24–27 °C) and rainfall averages 175 inches (in) (444.5 centimeters (cm)) per year (Hathaway et al. 2011, p. 6), without a specific rainy season. Temperatures on Guam are slightly higher, ranging 75–90 °F (24–32 °C), with rainfall averaging 98 in (249 cm), with the greatest rainfall occurring between July and November (<https://www.weather-us.com/en/guam-usa-climate>).

The closest landmass is more than 144 mi (232 km) from Palmyra. Given this and the fact that sihek are an island endemic not known to undertake long-distance flights over open ocean, it is extremely unlikely that sihek would move outside of the NEP area and survive. Also, no other kingfisher

species occur on Palmyra Atoll, thus all kingfishers on the atoll will be members of the NEP.

Land Ownership

Palmyra Atoll is currently owned and managed by the Service, The Nature Conservancy, and the Cooper family. The majority of the islands (390 ac (158 ha)), waters, and the coral reefs surrounding Palmyra Atoll, up to 12 nautical miles to sea, are owned by the United States and managed by the Service as a National Wildlife Refuge. Palmyra Atoll National Wildlife Refuge was established in 2001 to protect, restore, and enhance migratory birds, coral reefs, and threatened and endangered species in their natural setting. The Nature Conservancy owns two islands, Cooper and Menge (226 ac (91.5 ha)), and cooperatively manages the atoll with the Service. Home Island (1.8 ac (0.71 ha)) is under private fractional ownership by the Cooper family, and the Service provides stewardship for this island, providing it the same protections as Refuge property (Kropidowski, in litt. 2021). Palmyra Atoll is also part of the Pacific Remote Islands Marine National Monument, which was established in 2009 and is co-managed by the Service and the National Oceanic and Atmospheric Administration.

Likelihood of Population Establishment and Survival

In late 2020, we established a recovery team for sihek whose purpose is to assist the Service in developing and implementing a conservation strategy for reestablishing sihek in the wild. Members of this team developed a phased approach whereby learning sites (sites used to test conservation translocation procedures as well as demographic and behavioral responses of target species) help achieve the overarching objectives of reducing global sihek extinction risk, while also refining techniques to establish viable wild populations on Guam. Based on habitat suitability, food resource availability, and willing partners, we have identified Palmyra Atoll as a learning site.

The best available scientific data indicate that the introduction of sihek into suitable habitat is biologically feasible and would promote the conservation of the species. Coarse-scale modeling indicated Palmyra could support up to 15 breeding pairs (Laws and Kesler in litt. 2011, p. 65). We evaluated the ecological suitability of Palmyra Atoll and concluded sufficient habitat conditions and food resources are available to support the small

number of sihek needed for a temporary training site (USFWS unpublished data). No known predators of sihek occur on the Atoll. Further, we developed a release and monitoring program that includes interventions such as supplemental feeding if needed to increase the chances of survival. We assessed the potential environmental impacts of introducing sihek and designating the population as an NEP on Palmyra in an environmental assessment (USFWS 2023) (See *National Environmental Policy Act* section, below). To minimize risk to the ecosystem on Palmyra Atoll associated with the introduction, we will monitor for potential environmental impacts as part of the release program (see Monitoring and Evaluation, below).

Potential Effects of Activities on Palmyra Atoll on Introduced Sihek

The effects of Federal, State, or private actions and activities on Palmyra Atoll that are ongoing and expected to continue are not likely to adversely affect the sihek within the NEP area. Public access to Palmyra Atoll is extremely limited and available in only the following ways: (1) working for, contracting with, or volunteering for the Service or The Nature Conservancy; (2) conducting scientific research via Service special use permits; (3) invitation through the Service or The Nature Conservancy; or (4) by private recreational sailboat or motorboat. With prior approval by the Service, privately owned vessels are permitted to access the Palmyra Atoll National Wildlife Refuge. A maximum of two vessels are allowed at one time. Access to Cooper Island must be arranged and secured through The Nature Conservancy. Activities currently occurring in the NEP area, and those likely to occur, are not likely to impede the introduction effort. Current activities on Palmyra Atoll include an ongoing rainforest restoration project, operation of a research station, and limited recreation. The rainforest restoration project includes control of nonnative coconut trees, and opportunistic planting and seeding of native tree species. The Nature Conservancy manages a research station, and visiting scientists are required to obtain a permit from the Service to ensure compatibility with the mission of the Refuge. The Nature Conservancy also provides guided recreational activities (fishing, kayaking) to a small number of visitors to the Atoll. No significant development is planned on the Atoll for the foreseeable future.

Importance of the NEP to Recovery Efforts

This nonessential experimental population of sihek on Palmyra Atoll will promote the conservation and recovery of the species. The International Union for the Conservation of Nature's Guidelines for Reintroduction and Other Conservation Translocations (2013, p. 4) identifies several criteria to consider prior to undertaking a reintroduction, including "strong evidence that the threat(s) that caused any previous extinction have been correctly identified and removed or sufficiently reduced." Although the basic habitat components required by sihek on Guam are still present, they have been made unavailable to sihek due to the ongoing and pervasive threat of brown treesnakes (see *Recovery Efforts to Date*). Innovations in brown treesnake management show promise for controlling their populations at a landscape level but not within the time needed before we expect deleterious declines in the ex situ sihek population. The current captive-only sihek population is at high risk of extinction, and a moderate decline in reproductive output is likely to have long-term negative consequences on the survival probability for this species (see *Captive-Breeding Efforts and Reintroduction*). The number of breeding institutions participating in sihek management is limited and declining (Newland in litt. 2021b), further increasing the risk of reduced breeding effort and its associated population decline. Advancements in brown treesnake control show promise for reintroducing sihek to its native range on Guam in the future and that remains a recovery goal, but current control methods are not likely to be able to eradicate this threat prior to substantial forecasted declines in the sihek population.

Introducing a species outside its historical range per our current regulation at 50 CFR 17.81 requires the Service to find that a species' primary habitat has been irreversibly altered or destroyed. While sihek's primary habitat on Guam has not been irreversibly altered or destroyed in perpetuity, we interpret the meaning of "irreversibly altered or destroyed" in the context of the unique conditions facing sihek and the very limited current alternatives to prevent its extinction. The habitat on Guam has been irreversibly altered and destroyed for a period of time meaningful to the survival of the species. The ex situ population of sihek is extremely vulnerable to rapid population decline and extinction risk under current reproductive conditions

(Johnson et al 2015, p. 8, Trask et al. 2021, p. 6) such that increased reproductive output is paramount for population viability (Trask et al 2021, p. 7). Holding and breeding space at breeding institutions is limited, preventing growth of the ex situ population. Methods to control brown treesnakes on Guam are not sufficient to prevent significant predation on native bird species at this time and prevents us from releasing sihek there presently. Improvements in landscape-scale snake management are under development and are making incremental progress but will not be available for use prior to expected significant declines in the sihek population. Because of the immediate need to increase reproductive output and due to the continued presence of brown treesnakes on Guam, we find that sihek's habitat on Guam is irreversibly altered or destroyed for the purpose of this action, that is, until management of snakes at a landscape level makes it suitable for reintroduction and recovery.

We are releasing sihek onto Palmyra Atoll, which is outside its historical range, for the following purposes: (1) invigorate the ex situ conservation program to increase reproductive output by increasing breeding space at existing facilities and/or recruiting additional facilities to join the ex situ conservation program; and (2) develop and refine release and monitoring methods to be applied when reestablishing a population on Guam to recover the species. Release of sihek on Palmyra Atoll will improve the likelihood of successful reintroduction and recovery on Guam by: (1) providing the opportunity to develop and test release and monitoring techniques, (2) providing information on sihek's ability to survive in the wild, (3) assessing how much human intervention is required to support a wild population, (4) increasing the global population of sihek as an extension of the ex situ population as well as invigorating the breeding program, and (5) potentially serving as a source of wild-hatched birds for future releases on Guam or other sites.

Is the Experimental Population Essential or Nonessential?

When we establish experimental populations under section 10(j) of the Act, we must determine whether that population is essential or nonessential to the continued existence of the species. This determination is based solely on the best scientific and commercial data available. We consider an experimental population essential if its loss would be likely to appreciably

reduce the likelihood of survival of that species in the wild (50 CFR 17.80(b)). We are designating the population of sihek on Palmyra Atoll as nonessential for the following reasons:

(1) No populations of sihek occur in the wild currently;

(2) the experimental population area is too small to support a self-sustaining wild population of sihek (Laws and Kesler 2011, p. 63) and is intended only as a temporary training site (*i.e.*, approximately 10 or more years) for us to improve release techniques, monitoring, and adaptive management for population establishment on Guam, when its habitat is available; and

(3) loss of the experimental population would not preclude other recovery options, including future efforts to establish sihek populations elsewhere.

In addition, we evaluated the potential impacts of the establishment of the experimental population on the ex situ population. Establishment of the experimental population will not affect the potential to establish a future, self-sustaining, wild population of sihek on Guam for the following reasons:

(1) The majority of the sihek population will remain in an ex situ population distributed among 25 facilities, where they are carefully managed according to the Species Survival Plan Program (Newland in litt. 2021a); and

(2) only a small number of individuals will be removed from the ex situ population for release on Palmyra Atoll, and these removals are expected to have minimal impact on the survival of the ex situ population (see Donor Stock Assessment and Effects on Donor Population, below).

As mentioned above in Importance of the NEP to Recovery Efforts, the introduction on Palmyra Atoll will further the conservation of sihek both in terms of improving the status of the ex situ population and in increasing the likelihood of success in establishing wild populations. In the near term, we anticipate that the introduction of sihek to Palmyra Atoll will invigorate the ex situ breeding program and result in more breeding space at existing facilities, more institutions joining the program, or both, ultimately resulting in a larger population if additional institutions join. Space is a limiting factor for this extinct-in-the-wild species, and demonstrating our continued efforts to recover it in the wild will likely increase interest in the species (Newland in litt. 2022b). In the longer term, the information gathered from observing the species under wild conditions, development of suitable

release and monitoring methods, and assessment of how much human intervention might be needed to support a wild population will improve future release efforts. Lastly, wild-hatched sihek could be a complementary source, alongside captive-bred birds, for translocation to Guam or other sites.

Release Procedures

Late-stage nestlings or recent fledglings will be flown to Palmyra Atoll where they will be held in release aviaries for up to 1 month. Three sets of three flight aviaries will be established across Palmyra Atoll at, or close to, locations where habitat appears most suitable. During this time, sihek will undergo acclimation and training to respond to supplementary feeding signals. Prior to release, all sihek will be fitted with a radio transmitter consistent with the Bird Banding Laboratory of North America's guidelines that transmitters be no more than 3 percent of a bird's body weight (Gustafson et al. 1997).

Release from aviaries will be via opening of a panel in the aviary wall to allow individuals to come and go freely. We will monitor each sihek daily, immediately after release and throughout their first year of release. Once released, sihek will be exposed to conditions in the wild that the species has not encountered in more than 30 years. While still being held in pre-release aviaries on Palmyra Atoll, we will provide natural prey items as much or as often as necessary so the sihek can learn to forage on multiple food sources. Further, sihek will be trained to come to feeders through reinforcement with a whistle, thus allowing for a way to provide supplemental food if needed. We will also conduct a thorough health assessment on each individual prior to release to ensure they are in good body condition. After release, we will monitor sihek daily, and if an individual is sick or injured, we may intervene and bring it back under human care temporarily.

After the first year, we may reduce the intensity of monitoring if few or no problems are observed. Sihek monitoring will cover a range of components, including general behavior (maintenance, foraging, locomotion, conspecific interactions); health (weights collected remotely at feeding stations, fecal samples, and semiannual capture and assessment); and breeding (pairing, territoriality, nest excavation, nest building, egg laying and clutch size, hatch date, nestling survival, and fledge success). Additional details of the release procedures are provided in the

Sihek Management Plan (Andrews et al. in litt. 2022).

Donor Stock Assessment and Effects on Donor Population

The donor population for the introduction of sihek to Palmyra Atoll is the ex situ population of sihek. This population is distributed among 25 breeding facilities in the U.S. mainland and on Guam (24 AZA institutions and 1 Guam Division of Aquatic and Wildlife Resources (DAWR) facility), with the population being managed through the Sihek Species Survival Plan Program (see *Captive-Breeding Efforts*). The most recent population count documented 139 birds (Newland in litt. 2022a). The population size remains below the target of 200 individuals identified in the 2020 Species Survival Plan Program (Newland et al. 2020, p. 2) in large part due to limited holding capacity across the breeding facilities. Recent funding for the construction of another facility at Brookfield Zoo, as well as for the transfer to and maintenance of sihek at that facility, has allowed for growth of the population. The current Species Survival Plan Program coordinator is actively seeking additional AZA institutions to participate in the sihek breeding effort, and this solicitation will likely be aided by releases to Palmyra Atoll and the recent progress in recovery planning for the species.

Population models indicate that an increase in breeding (*i.e.*, production of hatchlings) is required to ensure the sustainable removal of individuals from the ex situ population for release to Palmyra (Johnson et al. 2015, p. 13, and Trask et al. 2021, p. 6). We have observed measurable population increases when there has been focused management to increase productivity in the ex situ population. Between 2004 and 2013, the sihek population increased from 61 birds to a peak of 157 birds because of increased reproductive output using multiple clutching (when a breeding pair is induced to produce more than one clutch of eggs per year by removing and artificially incubating the first clutch of eggs) (Newland et al. in litt. 2020, pp. 4–5). The best available information indicates that increasing ex situ reproductive output to rates seen between 2004 and 2013 is likely to support a release program on Palmyra without negatively impacting the long-term viability of the species (Trask et al. 2021, p. 6).

Only a small number of sihek will be removed from the ex situ population for release on Palmyra Atoll. We plan to remove up to 9 in the first year, and fewer than 9 in subsequent years, to

ultimately achieve a target of 10 breeding pairs. The release cohort will consist of hatch-year sihek that will be reared under pathogen- and vector-free conditions. All individuals will be health-screened prior to release. Release cohorts will consist of sihek that are relatively unrelated to each other (*i.e.*, sihek with low mean kinship), and that have a relatively low individual inbreeding coefficient. In addition to genetic considerations for released individuals, retaining maximum genetic diversity within the ex situ population is a priority; therefore, individuals identified as genetically valuable (*i.e.*, with a low mean kinship coefficient, such that they are genetically underrepresented in the ex situ population) will be retained in the ex situ population. We will assess selection of individuals in release cohorts for follow up translocations based on both the sex ratio and genetics of the introduced population on Palmyra Atoll, as well as that of the donor population.

Species Survival Plan Program annual reports (see *Captive-Breeding Efforts*) will continue throughout the releases and will be reviewed to ensure that removal of individuals for release will not be detrimental to the stability of the ex situ population. If negative impacts on the donor population are detected, we will pause releases while donor population health is improved. Given the careful management of the donor population, the ability to increase its productivity via multiple clutching, and the relatively small number of sihek that will be released annually, negative impacts to the donor population are expected to be minimal.

Management

We will collaborate with Guam DAWR, Zoological Society of London, AZA, Palmyra Atoll National Wildlife Refuge, and The Nature Conservancy on releases, monitoring, coordination, and other tasks as needed to ensure successful introduction of the species to Palmyra Atoll. A few specific management considerations are addressed below.

Incidental Take: Experimental population rules contain specific prohibitions and may provide exceptions regarding the taking of individual animals under the Act. The specific prohibitions and exceptions we adopt in this final rule are compatible with most routine human activities anticipated in the NEP area (*e.g.*, resource monitoring, invasive species management, and research; see Importance of the NEP to Recovery Efforts, above). Section 3(19) of the Act

defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

“Incidental take” is further defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Incidental take of sihek within the experimental population area will be allowed, provided that the take is unintentional and not due to negligent conduct.

Special Handling/Intentional Take: Employees of the Service, Guam DAWR, The Nature Conservancy, Zoological Society of London, AZA facilities holding sihek, and authorized agents acting on behalf of the Service or these other entities may intentionally take sihek through handling sihek for scientific purposes; relocating individuals or bringing individuals into captivity for the purposes of increasing sihek survival or fecundity; aiding sick or injured sihek; salvaging dead sihek; disposing of a dead specimen; or aiding in law enforcement investigations involving the sihek. Any other person would need to acquire a permit from the Service for these activities.

Interagency Consultation: For purposes of section 7(a)(2) of the Act, section 10(j) of the Act and our regulations (50 CFR 17.83) provide that nonessential experimental populations are treated as species proposed for listing under the Act except on National Park Service and National Wildlife Refuge System lands, where they are treated as threatened species for the purposes of section 7(a)(2) of the Act. We will address our section 7(a)(2) consultation obligations for sihek within the Palmyra National Wildlife Refuge through a programmatic intra-Service consultation completed prior to releasing birds. Any activities outside of those analyzed in our programmatic consultation that may affect sihek within the NEP area will be addressed through future individual intra-Service section 7 consultations.

Public Awareness and Cooperation: On November 18, 2021, in cooperation with Guam DAWR, we engaged the Governor of Guam and constituents to inform them of our plans to introduce sihek to Palmyra Atoll. We coordinated closely with the co-manager of Palmyra Atoll (The Nature Conservancy) throughout the planning process, and we expect our coordination with them will continue through the duration of the project. We publicized availability of the proposed rule (87 FR 53429, August 31, 2022) and the opportunity for comment with a press release (<https://fws.gov/story/2022-08/usfws-proposes-experimental-population->

sihek-palmyra-atoll). We also sent letters to 14 conservation partners, notifying them of the availability of the proposed rule and requesting comments.

Monitoring and Evaluation

We will monitor the health, habitat use, behavior, foraging activity, movement, breeding, and survival of all sihek released and hatched at Palmyra Atoll. We will attempt to weigh sihek daily at supplementary feeding platforms with inbuilt scales. Passive collection of fecal material from these supplementary feeding platform visits will be screened for gastrointestinal parasite loads and examination of diet. We will attempt to capture individuals twice each year for a more thorough physical examination (weight, condition, ectoparasite load, feather fault bar analysis). During these captures, we will take a blood sample, which will be stored in ethanol for later diagnostics of blood parasites, and a blood smear made for visual examination of blood parasites and white blood cell count analysis. Further, we will collect a fecal sample opportunistically and a cloacal swab for later bacterial culture.

Once each sihek is released, we will track it and attempt to log its location at least once daily to document post-release movement patterns and territory establishment. Individuals will be located via radio transmitter tracking or visual searches. During observations, we will record behaviors including maintenance, perching, ingestion, excretion, locomotion, vocalizations, and interactions. We will record food items whenever feeding is observed in free-flying sihek.

We will attempt to closely monitor all breeding attempts to determine timing of pairing, nest building, egg laying and clutch size, hatch date, nestling survival, and fledge success. Unhatched eggs will be collected for analysis of fertility and embryo development. Recovered dead nestlings will be necropsied in the field and samples taken for later laboratory analysis for cause of death. Where possible, surviving nestlings will be weighed every third day throughout development until banding age. During banding, we will collect a range of samples as specified above for adult health sampling.

We will create a resighting history for each sihek released or hatched into the population. We intend to monitor sihek and their prey species with the full-time presence of staff on Palmyra, at least until intensive monitoring shows: (1) sihek are foraging independently and

exhibiting behaviors typical of *Todiramphus* species; and (2) sihek are not having undesirable impacts on prey species populations (undesirable impacts are discussed further in the sections below). If the two situations described above occur, then we may reduce staffing to less than full time and monitor sihek and the environment less intensively. If undesirable impacts on prey species populations are not resolvable, we would evaluate whether this was an unacceptable impact requiring termination of the program. Unacceptable impacts are discussed below, in *Exit Strategy*.

Ecosystem Impacts

As Palmyra Atoll is outside the native range of the sihek, introduction of sihek to Palmyra Atoll could have potential impacts on native species. The International Union for the Conservation of Nature, Species Specialist Commission, Invasive Species Specialist Group recognizes several different mechanisms of impact that introduced species (that others have sometimes called alien species) can have on native ecosystems (Pagad et al. 2015, pp. 130–132). These include impacts through predation, competition, hybridization, or transmission of disease-causing pathogens to native species (Blackburn et al. 2014, pp. 4–7).

To assess the potential impacts that sihek may have on Palmyra Atoll and the mechanisms through which these impacts may occur, researchers on the recovery team conducted an environmental impact assessment, based on the Environmental Impact Classification for Alien Taxa (EICAT) (Blackburn et al. 2014, entire) and the Generic Impact Scoring System (Nentwig et al. 2010, entire). This process involved consulting with a range of relevant experts (n=19), who were asked to provide their judgment on the level of impact that sihek may have through each potential impact mechanism. Impact levels were described in a range from the lowest level of “minimal,” where effects are negligible, to the highest level of “massive,” where impacts result in local extinction(s) and community-level changes are irreversible. We evaluated the relative risk of competition, hybridization, predation impacts, and disease transmission in an environmental assessment. Based on our analysis in the environmental assessment, we conclude there is no risk of competition or hybridization, and there are sufficient measures in place to prevent disease transmission from the introduction. In addition, the planned intensive monitoring will be sufficient

to detect, and provide a timely response to, potential impacts of the sihek on the recipient ecosystem on Palmyra Atoll.

In the EICAT assessment, experts considered predation by sihek to be the most likely impact of sihek introduction to Palmyra (although the magnitude of this factor was judged to be moderate at most). The EICAT assessment experts’ scoring generally assessed the introduction of a novel avian predator. Therefore, we will focus post-release environmental monitoring on potential sihek prey species that are native to Palmyra Atoll. We will obtain sihek diet information through behavioral observation and fecal samples, as described above (Release Procedures and Monitoring and Evaluation). This information will highlight major components of sihek post-release diet and help guide more focused monitoring.

At a minimum, we will coordinate with The Nature Conservancy and Palmyra National Wildlife Refuge to carry out annual monitoring on a range of suitable prey items, as described above. We will use the most appropriate survey methods for different taxa. If dietary and behavioral observations of released sihek suggest a particular prevalence and abundance of specific prey items that are of conservation concern, we will establish more frequent monitoring surveys. We will analyze post-release monitoring data to obtain estimates of abundance and density for reference taxa. These estimates will then be compared with pre-release monitoring data, collected in the weeks prior to release, with estimates from paired locations across the island in a before-after, control-impact experimental design. In the event we find estimated impacts to be unacceptably high, such as preferential prey selection for one species such that it has population-level effects, we will activate an appropriate response (see *Exit Strategy*, below).

Our present monitoring plan relies on a combination of targeted prey species surveys and information from existing monitoring of released birds. Our monitoring approach balances the negative impacts of frequent invasive surveys with the need to identify serious negative consequences of the sihek releases on the recipient site. Active monitoring will be for 2 years after the first release, and we will regularly assess results through monthly summaries, analyses at 6-month intervals, and annual predictive modeling. After the first 2 years, we will determine whether to continue at full intensity, reduce the intensity of our monitoring, or discontinue monitoring.

Factors that will impact our decision making regarding monitoring include evidence of:

- Sihek prey selection for a single species, which could indicate population impacts to that species;
- detection of significant changes in abundance of prey in areas with sihek compared with areas without sihek; or
- shifts in community composition and diversity that differ significantly between areas with sihek and areas without sihek.

If any undesirable impacts are causally linked to the introduction of sihek, we will weigh the benefits and risks in consultation with the recovery team and The Nature Conservancy to determine whether to continue ongoing management, adopt risk mitigation strategies, or terminate the program (see *Exit Strategy*, below).

Annual reports summarizing monitoring and management activities will be developed by the Zoological Society of London in collaboration with the Service, The Nature Conservancy, and the Sihek Recovery Team.

Exit Strategy

Depending on the circumstances, the Service may either terminate or pause the release program to address identified issues before possibly resuming. These scenarios and the Service’s expected response are detailed below.

The Service will terminate the release program on Palmyra Atoll if:

- (1) Monitoring indicates the benefits from the Palmyra population (including learning and refining release and support strategies for eventual releases on Guam) no longer outweigh the risks to the species or the welfare of the NEP or ex situ population; or
- (2) monitoring shows unacceptable impacts on the ecosystem that can be clearly causally linked to the introduction of sihek.

In addition to these “must terminate” scenarios, the Service may also terminate the release program:

- (3) When the purposes of the program have been realized (e.g., we have developed successful release and monitoring methodologies to apply to future release efforts or we have demonstrated sihek can survive and reproduce in the wild without human intervention, see Importance of the NEP to Recovery Efforts), although we do not anticipate this scenario until 10 or more years after the first release.

The Service may also temporarily suspend the program to address issues that arise before program termination under any of the three scenarios above. The monitoring team will summarize

information they collect on a regular basis and will share it with the recovery team and the managers of Palmyra Atoll (the Service and The Nature Conservancy). If results indicate the program is approaching scenario (1) or (2) above, then the Service, in consultation with the recovery team and The Nature Conservancy, will determine if terminating the program is the best way to avoid these outcomes, or whether the program should be paused, and adaptive steps taken to address them before resuming the program.

Regular monitoring and reporting will also inform progress toward achieving program goals and scenario (3) above: The Service will determine—in consultation with the recovery team and The Nature Conservancy—when the purpose of the NEP has been achieved such that the program can come to an end. When the Service terminates the program, the Service will also address what will happen with any remaining individuals in the NEP, *i.e.*, whether they will be relocated to captivity, relocated to other suitable habitat, or remain on Palmyra, based on the circumstances at the time of termination.

Summary of Comments and Recommendations

In the proposed rule published on August 31, 2022 (87 FR 53429), we requested that all interested parties submit written comments on the proposal by September 30, 2022. In addition, in accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and updated guidance issued on August 22, 2016 (USFWS 2016, entire), we solicited peer review of our proposed rule from six knowledgeable individuals with scientific expertise in conservation translocation, endangered species management, Pacific Island birds, and Guam native bird species. We received responses from three peer reviewers. We also contacted appropriate Federal and State agencies, local experts, and organizations, and other interested parties and invited them to comment on the proposal.

We reviewed all comments received from the public and peer reviewers for substantive issues and new information regarding the establishment of an experimental population of sihek on Palmyra Atoll. Comments on these issues and information are addressed in the following summary and have been incorporated into this final rule as appropriate. Changes other than minor word changes for clarification or correction incorporated into the final rule are summarized in the Summary of

Changes from the Proposed Rule section, below.

Peer Review Comments

All peer reviewers expressed support for the introduction of an experimental population of sihek with an associated 10(j) rule and agreed that the action is likely to contribute to the conservation of the species. Comments from peer reviewers resulted in updates in two areas of this final rule (see Summary of Changes from Proposed Rule).

(1) *Comment:* One peer reviewer indicated their support for establishing a 10(j) experimental population because of the negative consequences of maintaining a species solely in captivity, including risks associated with small population size and inbreeding depression.

Response: Recent population viability models (Johnson et al. 2015 in litt and Trask et al. 2021) have demonstrated rapid declines in the captive population if the reproductive rate remains the same. Breeding facilities are currently at capacity, and the sihek's population growth is constrained. The establishment of an experimental population of sihek on Palmyra Atoll will provide an opportunity to increase the sihek population, and to expose a portion of this population to habitat conditions in the wild for the first time in more than 30 years.

(2) *Comment:* Multiple reviewers commented that, at present, sihek habitat on Guam is compromised by the continued presence of brown treesnakes. They stated that, nevertheless, good progress is being made towards the eventual eradication of brown treesnakes such that future restoration of sihek to Guam remains an attainable goal.

Response: Reestablishing populations of sihek on Guam is an essential component of the recovery strategy for sihek, as expressed in the recovery criteria of the sihek recovery plan (USFWS 2008, pp. 42–43). We presently cannot release sihek within their historical range due to the continued presence of brown treesnakes. The establishment of an experimental population on Palmyra Atoll will allow us the needed testing of field techniques for the future reintroduction of sihek on Guam, once landscape-scale management of brown treesnakes is implemented and effective. In recent years, technological advances to control brown treesnakes show promise as a tool to control snakes at a landscape level. However, they are not yet sufficient to protect sihek from unsustainable predation, and therefore it is not possible to reintroduce sihek to

Guam before significant declines in the *ex situ* population are expected to occur. Thus, the establishment of an experimental population on Palmyra Atoll helps reduce sihek extinction risk while brown treesnake control methods are refined and implemented.

(3) *Comment:* One reviewer stated that releasing sihek onto Palmyra Atoll as an experimental population is reasonable and scientifically sound. They went on to state that considerable work has been conducted to assess the suitability of Palmyra for Guam kingfishers, and to consider the possibilities of negative consequences to the fauna of Palmyra. The reviewer further stated that the process of introducing, managing, and monitoring sihek on Palmyra would provide invaluable knowledge for doing so eventually on Guam. As a result, the reviewer stated that the 10(j) experimental population of sihek will greatly increase the probability of success for a future Guam reintroduction.

Response: Introducing a species outside its historical range has inherent risks, both to the species and the ecosystem into which it is being introduced. We evaluated the extinction risk to sihek and determined the experimental population on Palmyra Atoll would further the species' recovery by increasing the worldwide population, developing and refining release techniques, and establishing a source of wild-adapted birds for future releases. We also evaluated the suitability of Palmyra Atoll for sihek through an assessment of prey availability and habitat suitability based on available information. We will monitor sihek and prey species to evaluate potential impacts to their populations. If negative changes in populations are causally linked to sihek and are undesirable, we will weigh the benefits and risks in consultation with the recovery team and The Nature Conservancy to determine whether to continue ongoing management, adopt risk mitigation strategies, or terminate the program (see *Exit Strategy*, above).

(4) *Comment:* One reviewer commented that successfully establishing a population of sihek on Palmyra would not only allow the species to exist in the wild again, allowing for beneficial behaviors and adaptations to be maintained, but would also be an important source of individuals for the reintroduction of sihek to Guam when conditions allow. Additionally, the process of introducing, managing, and monitoring sihek on Palmyra would provide invaluable knowledge for doing so

eventually on Guam. Therefore, the reviewer stated that the 10(j) experimental population of sihek will greatly increase the probability of success for a future Guam reintroduction.

Response: The successful establishment of the experimental population on Palmyra will advance conservation and recovery of the species. .

Public Comments

(1) *Comment:* Several commenters shared their support for the proposed 10(j) experimental population as a first step toward recovering the sihek.

Response: In our efforts to further the conservation of sihek, we will learn valuable information that will inform future release efforts, including release techniques, behavior in wild conditions, and monitoring methods. We will also increase the number of sihek in existence and have a small population of wild birds to potentially help source future translocation efforts. Without the forethought of those who brought sihek into captivity and the effort of the institutions that have managed the populations during this time, the sihek would have been lost.

(2) *Comment:* One commenter noted the importance of involving CHamoru scientists and cultural practitioners in the development and implementation of the project.

Response: The Service values incorporating biological and cultural perspectives of the CHamoru people in sihek recovery efforts. At the beginning of translocation site selection and project development in 2019, the Service held a workshop on Guam to receive input and feedback from cultural leaders. The intent of the workshop was to acknowledge and better understand the significant connection the sihek has with the CHamoru people and their culture. We recognize that the release of sihek is about much more than saving a species. Given the sihek's cultural and biological importance to Guam, the Service developed several objectives for connecting with the community that are reflected in work plans that complement this 10(j) regulatory process under the Act. Throughout project planning, in coordination with our partners, we actively sought out local and indigenous community involvement. Today, the Service continues to work with the Guam DAWR, scientists, cultural practitioners, and the public as we collaborate to return the sihek back to the wild. At the time of introduction, due to limited transportation infrastructure and the distance of

Palmyra Atoll from Guam, accommodating more local involvement or protocols may be challenging. The Service welcomes continued discussions with the CHamoru community to address scientific and cultural protocols for the sihek.

(3) *Comment:* One commenter noted the importance of an outreach program on Guam to increase awareness of sihek and to engender support for the establishment of an experimental population on Palmyra Atoll.

Response: A partner on Guam was awarded a nationally competitive grant to assist with Guam outreach efforts. It is a multifaceted, multiyear outreach program to be implemented prior to and concurrent with the Service's sihek release and monitoring projects. The program was developed by the Service's partners and Guam-based collaborators with expertise in science and education, as well as with CHamoru language and culture. This outreach will engage 40 teachers, train high school students, and engage more than 2,000 fourth-grade students in the first year. This program will also empower students and teachers to take action to protect the sihek and Guam's natural resources, while promoting an appreciation of the sihek's cultural significance. A CHamoru Sihek Storybook will be produced in the CHamoru language, along with a sihek activity book, and a website with updateable sihek resources and student contributions. A sihek-focused curriculum will be created and shared with teachers and students.

The outreach program is designed to increase awareness of the sihek's story: its threats, the status and importance of the sihek captive population, and future goals of the sihek recovery project. Expanding its reach beyond schools and with the public, the outreach program will share information at island-wide events and through local media and will enable the Service and its partners to showcase outreach milestones and successes.

(4) *Comment:* One commenter expressed concern about our proposal to decrease ecosystem and prey monitoring if we detect negligible impacts from the introduction of sihek and suggested that we further define "unacceptable" impacts.

Response: Many potential prey species occur on Palmyra Atoll, and we have relatively little knowledge about what sihek will preferentially feed upon after release, other than using general assumptions about prey size and *Todiramphus* biology. Detecting the impact of released sihek on prey species and the recipient ecological community is likely to require a relatively large

sample size, replicated in space and time, to achieve sufficient statistical power. Our monitoring plan relies on a combination of targeted prey species surveys and information from monitoring released birds. Our monitoring approach balances the negative impacts of frequent invasive surveys with the need to identify serious negative consequences of the sihek releases on the recipient site. Active monitoring will occur for at least 2 years after the first release, and we will regularly assess results through monthly summaries, more in-depth analyses at 6-month intervals, and annual predictive modeling. After the first 2 years, we will determine whether to continue at full intensity, downscale, or discontinue monitoring.

In this final rule we have clarified that we will evaluate if impacts are undesirable relative to sihek predation on local species for purposes of our monitoring strategy based on the following factors:

- sihek prey selection for a single species, which could indicate population impacts to that species;
- detection of significant changes in abundance of prey in areas with sihek compared with areas without sihek; or
- shifts in community composition and diversity that differ significantly between areas with sihek and areas without sihek.

If any undesirable impacts are causally linked to the introduction of sihek, we will weigh the benefits and risks in consultation with the recovery team and The Nature Conservancy to determine whether to continue ongoing management, adopt risk mitigation strategies, or terminate the program (see *Exit Strategy*, above).

As to the commenter's request that we provide specific definitions for "unacceptable" impacts that require termination of the program, we are unable to define specific, quantitative parameters to do so. Rather, through our continued monitoring and coordination and consultation with the recovery team and The Nature Conservancy, we expect to keep ahead of any potential negative impacts to the ecosystem as a result of the introduction in order to adaptively respond before termination would be required.

(5) *Comment:* One commenter stated that the removal of eggs from the captive population would have a deleterious impact and increase extinction risk, particularly if the released individuals do not survive.

Response: We intend to introduce a small number of sihek to Palmyra Atoll: 9 individuals in the first year, with additional, likely smaller, cohorts of

birds in subsequent years to reach a target population of 20 birds. Evaluation has shown that a small increase in the average annual reproductive output (from 2.54 hatchlings per female per year to 2.70 hatchlings per female per year) could support long-term (50-year) sihek population viability as well as a release program (Trask et al. 2021, p. 6). Further, we would remove eggs from captive-breeding pairs during incubation, and allow the pair to lay another clutch, thus replacing the birds removed from the ex situ (captive) population, which will—from a demographic standpoint—negate the loss of these individuals. The ex situ population is the only population of sihek in the world, so we will monitor it closely to ensure that there are no negative impacts to its viability and potential growth. We have included triggers for pausing or ending the release program; a negative impact to the ex situ population is one of the triggers for enacting one of those strategies.

(6) *Comment:* One commenter noted that the captive (ex situ) sihek population is small, and that measures will need to be in place to ensure the introduced population on Palmyra can survive.

Response: We recognize the importance of ensuring the integrity of the captive (ex situ) population of sihek and implementing measures to maximize the odds that the introduced population on Palmyra survives. Only a small number of sihek will be removed from the ex situ population (up to nine in the first year), and the best available information indicates the ex situ population can support this program without negative impacts to its viability. Once released on Palmyra, sihek will be exposed to conditions in the wild—conditions that the species has not encountered in more than 30 years. While still being held in pre-release aviaries on Palmyra Atoll, we will provide natural prey items as necessary so the sihek can learn to forage on multiple food sources. Further, birds will be trained to come to feeders through reinforcement with an associated sound, thus allowing supplemental food provisioning if needed. We will also conduct a thorough health assessment of each individual prior to release to ensure they are in good body condition. After release, we will monitor individuals daily. If a bird is sick or injured, we may intervene and bring it in under veterinary care as needed.

(7) *Comment:* One commenter was concerned that sihek might consume prey items with residual amounts of

rodenticide from the 2011 eradication of rats from Palmyra Atoll.

Response: Amplification of toxicants through the food chain can be a concern in predator eradication programs. A study to evaluate potential impacts on Palmyra Atoll (Wegmann et al. 2019, entire) collected samples of numerous species, including potential sihek prey items, and tissue analyses showed no residue in invertebrates or geckos 3 years after the rat eradication. Thus, secondary exposure to rodenticide through consumption of exposed prey items is highly unlikely.

(8) *Comment:* One commenter expressed concern that sihek might consume prey items that have ingested rodenticides used to prevent rats from reinvading Palmyra Atoll.

Response: Rodents were eradicated from Palmyra in 2011, and efforts to reduce the likelihood of reintroduction include a limited use of rodenticide when planes or ships arrive at the Atoll. Rodenticide is applied only around the points of entry (runway and dock), and baits are contained within bait boxes (Wegmann in litt. 2022a). This application occurs for two days prior to a plane or ship arriving and remains in place for four days after the arrival of a plane and for 16 days after the arrival of a ship. The bait stations are monitored for rodent signs, and hermit crabs (*Coenobita brevipennis* and *C. perlatus*) on which sihek feed. The bait stations are placed on “crab-resistant” platforms to minimize entry by crabs, so very few crabs access the bait stations, and those that are found weigh generally around 2.8 oz (80g), which is well outside the size class of prey that sihek can take (Wegmann in litt. 2022b, Andrews et al. 2022, p. 19). Further, research showed no residue in invertebrates 3 years after the rat eradication (Wegmann et al. 2019). As a result, secondary exposure to rodenticide through consumption of exposed crustaceans is highly unlikely. If this unlikely scenario occurs, we will evaluate methods to further minimize such exposure risk (e.g., improving the stations to further reduce the ability of crabs to enter), while balancing the need to prevent the reinvansion of Palmyra by rodents. We would also consider the use of non-toxicant biosecurity methods.

(9) *Comment:* Three commenters were concerned about potential predation of sihek by brown treesnakes on Palmyra Atoll.

Response: No brown treesnakes occur on Palmyra Atoll. Sihek released on Palmyra Atoll will not be exposed to any predation pressure as no known predators of sihek occur on the Atoll.

(10) *Comment:* One commenter was concerned with introduced sihek competing with other species on Palmyra Atoll, such as black drongo.

Response: Black drongos occur on Guam but do not occur on Palmyra Atoll.

No other native or nonnative species on Palmyra Atoll share the same diet or habitat preferences as the sihek. Thus, sihek will not directly compete with any species on Palmyra Atoll.

Summary of Changes From Proposed Rule

Comments received by the public and peer reviewers resulted in updates in two areas from the proposed rule to the final rule. In the final rule preamble, we:

- Provide more detail regarding how we will determine if releasing sihek on Palmyra Atoll will have undesirable impacts to prey species (see *Ecosystem Impacts*); and
- Provide more detail regarding management of released sihek (see *Release Procedures*).

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing sihek onto Palmyra Atoll with the regulatory provisions in this rulemaking will further the conservation of the species. We find that the continued presence of the brown treesnake on Guam means that sihek's native habitat has been unsuitably and irreversibly altered or destroyed for the foreseeable future such that the introduction of sihek to Palmyra Atoll outside of its probable historical range is warranted and consistent with our regulations at 50 CFR 17.81. We define the foreseeable future as the period of time before significant declines in the ex situ population of sihek are likely to occur. The nonessential experimental population status is appropriate for the introduced population; the potential loss of the experimental population would not appreciably reduce the likelihood of the survival of the species in the wild because there are currently no sihek remaining in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 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. The Executive order 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 rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule does not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The areas that are affected under this rule are restricted to Palmyra Atoll. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP area. In regard to section 7(a)(2) of the Act, the sihek population will be treated as proposed for listing, and, therefore, Federal action agencies are not required to consult on their activities, except on National Wildlife Refuge System lands, where the NEP will be treated as a

threatened species for the purposes of section 7 of the Act.

Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed for listing. However, because the NEP is, by definition, not essential to the survival of the species, and no sihek exist in the wild outside of the NEP area that could be impacted, conferring will likely never be required for the sihek population within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. Section 7(a)(1) of the Act requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. On National Wildlife Refuge System lands within the NEP area, the sihek would be treated as a threatened species for the purposes of section 7 of the Act. As a result, and in accordance with our regulations, some modifications to proposed Federal actions within National Wildlife Refuge System lands may occur to benefit the sihek, but we do not expect projects to be substantially modified because these lands are already administered in a manner that is compatible with sihek conservation.

This rule broadly authorizes incidental take of the sihek within the NEP area. The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity, such as habitat management, infrastructure maintenance, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for authorized data collection or recovery purposes by authorized personnel are also allowed under the NEP designation. Other forms of intentional take would require a section 10(a)(1)(A) recovery permit under the Act.

The only private landowners on Palmyra Atoll are The Nature Conservancy and the Cooper family. The principal activities on private property near the release site are associated with scientific field station operations, including the operation of a landing strip for aircraft, and some limited recreation. The presence of the sihek is not likely to significantly affect the use of lands for these purposes because no new or additional economic or regulatory restrictions will be imposed upon private landowners due

to the presence of the sihek. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule does not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, that, if adopted, this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A small government agency plan is not required. Small governments are not affected because the NEP designation does not place additional requirements on any city, county, or other local municipalities.

(2) This rule will not produce a Federal mandate of \$100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This NEP designation for sihek does not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When introduced populations of federally listed species are designated as nonessential experimental populations, the Act's regulatory requirements regarding the introduced population are significantly reduced. This rule would allow for the taking of sihek when such take is incidental to an otherwise legal activity.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property and (2) would not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this rule has significant federalism effects and have determined that a federalism assessment is not required. This rule does not have substantial direct effects on the States, on the relationship

between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this rule with the affected resource agencies in Guam. Achieving the recovery goals for this species will contribute to its eventual delisting. No intrusion on Territory policy or administration is expected, roles or responsibilities of Federal or Territory governments would not change, and fiscal capacity would not be substantially directly affected. The rule operates to maintain the existing relationship between the Territory and the Federal Government and is being undertaken in coordination with the Territory of Guam. We have coordinated closely with the Guam Department of Agriculture in the preparation of this rule. Therefore, this rule does not have significant federalism effects or implications to warrant the preparation of a federalism assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996, 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

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 permitting and reporting requirements associated with native endangered and threatened species, and experimental populations,

and assigned the following OMB Control Numbers:

- 1018–0094, “Federal Fish and Wildlife Permit Applications and Reports—Native Endangered and Threatened Species; 50 CFR parts 10, 13, and 17” (expires 01/31/2024), and
- 1018–0095, “Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84” (expires 9/30/2023).

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.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact of this final rule. In cooperation with The Nature Conservancy, we prepared an environmental assessment, and we determined based on that assessment that the proposed action of implementing the introduction of sihek to Palmyra Atoll will not have a significant impact on the environment, which we documented in a finding of no significant impact (FONSI) (USFWS 2023).

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

References Cited

A complete list of all references cited in this rule is available upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) or online at <https://www.regulations.gov> in Docket No. FWS–R1–ES–2022–0061.

Author

The primary author of this rule is Megan Laut of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Signing Authority

Wendi Weber, Acting Director of the U.S. Fish and Wildlife Service, approved this action on February 13, 2023, for publication. On March 19, 2023, Martha Williams, Director of the U.S. Fish and Wildlife Service, 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.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife under BIRDS by revising the entry for “Kingfisher, Guam (sihek)” (as added February 2, 2023, at 88 FR 7134, and effective May 3, 2023) to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Birds				
*	*	*	*	*
Kingfisher, Guam (=sihek).	<i>Todiramphus cinnamominus</i> .	Wherever found, except where listed as an ex- perimental population.	E	49 FR 33881, 8/27/1984; 50 CFR 17.95(b) CH.
Kingfisher, Guam (=sihek).	<i>Todiramphus cinnamominus</i> .	U.S.A. (Palmyra Atoll) ...	XN	88 [Insert FEDERAL REGISTER page where the document begins], 4/4/2023; 50 CFR 17.84(a) 10j.
*	*	*	*	*

■ 3. Amend § 17.84 by adding paragraph (a) to read as follows:

§ 17.84 Special rules—vertebrates.

(a) Guam kingfisher, sihek (*Todiramphus cinnamominus*).

(1) *Where is the occurrence of sihek designated as a nonessential experimental population (NEP)?* The nonessential experimental population (NEP) area for the sihek is Palmyra Atoll. Palmyra Atoll is located in the Northern Line Islands, approximately 1,000 miles (1,609 km) south of Honolulu, Hawaii (5° 53'N latitude, 162° 05'W longitude). The extent of the NEP area for sihek is the 250 ha (618 ac) of emergent land distributed among 25 islands, inclusive of the lagoons surrounding those islands.

(2) *What take of sihek is allowed in the NEP area?* (i) Throughout the sihek NEP area, you will not be in violation of the Act if you take a sihek, provided such take is nonnegligent and incidental to a lawful activity, such as habitat management, invasive species management, or scientific research and monitoring, and you report the take as soon as possible as provided under paragraph (a)(2)(iii) of this section.

(ii) Any person with a valid permit issued by the Service under § 17.32 may take sihek in the NEP area, pursuant to the terms of the permit. Additionally, any employee or authorized agent of the Service, Guam Division of Aquatic and Wildlife Resources, The Nature Conservancy, Zoological Society of London, or Association of Zoos and Aquariums, who is designated and trained to capture, handle, band, attach transmitters, and collect biological samples, when acting in the course of official duties, may take a sihek within the NEP area if such action is necessary to:

(A) Handle birds for scientific purposes such as banding, measuring, and sample collection;

(B) Relocate individuals or bring individuals into captivity for the

purposes of increasing sihek survival or fecundity;

(C) Aid a sick, injured, or orphaned sihek;

(D) Salvage a dead specimen that may be useful for scientific study;

(E) Dispose of a dead specimen;

(F) Aid in law enforcement investigations involving the sihek; or

(G) Take sihek into captivity in accordance with the exit strategy of the program (see paragraph (a)(5) of this section).

(iii) Any take pursuant to paragraph (a)(2)(i) or (a)(2)(ii)(C) through (E) of this section must be reported as soon as possible to the Permits Coordinator, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawaii 96850 (808/792-9400), who will determine the disposition of any live or dead specimens.

(3) *What take of sihek is not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (a)(2) of this section, all of the provisions of § 17.31(a) and (b) apply to the sihek in areas identified in paragraph (a)(1) of this section, and any manner of take of a member of the NEP not described under paragraph (a)(2) of this section is prohibited.

(ii) You must not possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any sihek or part thereof from the experimental population taken in violation of the regulations in this paragraph (a) or in violation of applicable Territorial laws or regulations or the Act.

(iii) It is unlawful for you to attempt to commit, solicit another to commit, or cause to be committed, any take of sihek, except as expressly allowed in paragraph (a)(2) of this section.

(4) *How will the effectiveness of this introduction be monitored?* The Service will evaluate the introduction on an annual basis. This evaluation will include, but will not be limited to, a review and assessment of management

issues, sihek movements, and post-release behavior; food resources and dependence of sihek on supplemental food; fecundity of the population; causes and rates of mortality; program costs; impacts to the ex situ population; and information gathered to inform releases on Guam or other sites.

(5) *When will this introduction end?* Depending on the circumstances, the Service may either terminate the release program or temporarily pause the release program to address identified issues before resuming. When the Service terminates the program, the Service will address the disposition of any remaining individuals in the NEP, *i.e.*, whether they will be relocated to captivity or to other suitable habitat or whether they would remain on Palmyra, based on the circumstances at the time of termination.

(i) The Service will terminate the release program on Palmyra Atoll if monitoring indicates that:

(A) The benefits from the Palmyra population (including developing and refining release and support strategies for eventual releases on Guam) no longer outweigh the risks to the species or the welfare of the NEP or ex situ population; or

(B) Unacceptable impacts on the ecosystem can be clearly causally linked to the introduction of sihek.

(ii) The Service may also terminate the release program when one or more of the objectives of the program have been achieved (*e.g.*, we have developed successful release and monitoring methodologies to apply to future release efforts or we have demonstrated that sihek can survive and reproduce in the wild without human intervention).

* * * * *

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. 2023-06958 Filed 4-3-23; 8:45 am]

BILLING CODE 4333-15-P

Proposed Rules

Federal Register

Vol. 88, No. 64

Tuesday, April 4, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2020-0707; Airspace
Docket No. 18-AWP-28]

RIN 2120-AA66

Establishment of Class E Airspace; Benton Field Airport, Redding, CA

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Supplemental notice of
proposed rulemaking (SNPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Benton Field Airport. This action will support the airport's transition from visual flight rule (VFR) to instrument flight rule (IFR) operations at the airport.

DATES: Comments must be received on or before May 19, 2023.

ADDRESSES: Send comments identified by FAA Docket No. FAA-2020-0707 and Airspace Docket No. 18-AWP-18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493-2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time.

Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/.

FOR FURTHER INFORMATION CONTACT:

Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231-2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class E airspace at Benton Field Airport, Redding, CA, to support IFR operations at the airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time—either electronically or in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning

this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit (including any personal information the commenter provides), to www.regulations.gov; this is described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Incorporation by Reference

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order 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.

Background

The FAA published an NPRM in the **Federal Register** for FAA–2020–0707 (85 FR 49985; August 17, 2020) to establish Class E airspace at the Benton Field Airport for the purpose of containing the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 16 approach and the RNAV (GPS) RWY 34 approach. Following the above NPRM publication, the two procedures were modified and renamed. The RNAV (GPS) RWY 16 approach was modified to become a circling only approach and was renamed as the RNAV GPS–A approach. The RNAV (GPS) RWY 34 approach was modified to become a circling only approach and was renamed as the RNAV GPS–B approach. These revised procedures have generated the need for additional modifications to the airspace dimensions to appropriately contain the procedures at Benton Field Airport, CA. This supplemental SNPRM reflects those changes.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 by establishing Class E airspace, extending upward from 700 feet above the surface, at Benton Field Airport. This area is designed to accommodate arriving IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface. The proposed airspace is described in relation to the airport reference point and is within a 3.3-mile radius of the airport, and within 4 miles east and 2.3 miles west of the 002° bearing from the airport, extending from 3.3-miles radius to 12.4 miles north of the airport, and within 3.1 miles each side of the 179° bearing from the airport, extending from the 3.3-mile radius to 8.8 miles south of the airport.

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, is non-controversial, and is unlikely to result in adverse or negative comments. 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 will only affect air traffic procedures and air navigation, it

is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

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

* * * * *

AWP CA E5 Redding, CA [New]

Benton Field Airport, CA
(Lat. 40°34′25″N, long. 122°24′26″W)

That airspace extending upward from 700 feet above the surface within a 3.3-mile radius of the airport, and within 4 miles east and 2.3 miles west of the 002° bearing from the airport, extending from 3.3-miles radius to 12.4 miles north of the airport, and within 3.1 miles each side of the 179° bearing from the airport, extending from the 3.3-mile radius to 8.8 miles south of Benton Field Airport.

* * * * *

Issued in Seattle, Washington, on March 27, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–06886 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1006]

Schedules of Controlled Substances: Temporary Placement of MDMA-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Proposed amendment; notice of intent.

SUMMARY: The Administrator of the Drug Enforcement Administration is issuing this notice of intent to publish a temporary order to schedule six synthetic cannabinoids and their optical and geometric isomers, salts, and salts of isomers, whenever the existence of such isomers and salts is possible, in schedule I under the Controlled Substances Act. When it is issued, the temporary scheduling order will impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle these six specified controlled substances.

DATES: This notice of intent is effective April 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Boos, Drug & Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

SUPPLEMENTARY INFORMATION: The notice of intent contained in this document is issued pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). The Drug Enforcement Administration (DEA) intends to issue a temporary scheduling order (in the form of a temporary amendment) to add the following six substances, including their optical, positional, and geometric isomers, salts, and salts of isomers whenever the existence of such isomers and salts is possible, to schedule I under the Controlled Substances Act (CSA):¹

¹ Though DEA has used the term “final order” with respect to temporary scheduling orders in the past, this notice of intent adheres to the statutory language of 21 U.S.C. 811(h), which refers to a “temporary scheduling order.” No substantive change is intended.

- Methyl 3,3-dimethyl-2-(1-(pent-4-en-1-yl)-1*H*-indazole-3-carboxamido)butanoate (Other name: MDMB-4en-PINACA),
- Methyl 2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethylbutanoate (Other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA),
- *N*-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(pent-4-en-1-yl)-1*H*-indazole-3-carboxamide (Other name: ADB-4en-PINACA),
- 5-Pentyl-2-(2-phenylpropan-2-yl)pyrido[4,3-*b*]indol-1-one (Other name: CUMYL-PEGACLONE; SGT-151),
- Ethyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethylbutanoate (Other names: 5F-EDMB-PICA; 5F-EDMB-2201),
- Methyl 2-(1-(4-fluorobenzyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other name: MMB-FUBICA)

The temporary scheduling order will be published in the **Federal Register** on or after May 4, 2023.

Legal Authority

The CSA provides the Attorney General (as delegated to the Administrator of DEA (Administrator) pursuant to 28 CFR 0.100) with the authority to temporarily place a substance in schedule I of the CSA for two years without regard to the requirements of 21 U.S.C. 811(b), if he finds that such action is necessary to avoid an imminent hazard to the public safety.² In addition, if proceedings to control a substance are initiated under 21 U.S.C. 811(a)(1) while the substance is temporarily controlled under section 811(h), the Administrator may extend the temporary scheduling for up to one year.³

Where the necessary findings are made, a substance may be temporarily scheduled if it is not listed in any other schedule under 21 U.S.C. 812, or if there is no exemption or approval in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 355. 21 U.S.C. 811(h)(1); 21 CFR part 1308.

Background

The CSA requires the Administrator to notify the Secretary of the Department of Health and Human Services (HHS) of an intent to place a substance in schedule I of the CSA temporarily (*i.e.*, to issue a temporary scheduling order).⁴ The Administrator transmitted the required notice to the

Assistant Secretary for Health of HHS (Assistant Secretary)⁵ by letter dated January 24, 2022 regarding MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA. The Assistant Secretary responded to this notice by letter dated March 7, 2022, and advised that based on a review by the Food and Drug Administration, there are currently no approved new drug applications or investigational new drug applications for MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, or MMB-FUBICA. The Assistant Secretary also stated that HHS has no objection to the temporary placement of these substances in schedule I of the CSA. MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, or MMB-FUBICA currently are not listed in any schedule under the CSA, and no exemptions or approvals under 21 U.S.C. 355 are in effect for these six substances.

Under 21 U.S.C. 811(h)(3), to find that temporarily placing a substance in schedule I of the CSA is necessary to avoid an imminent hazard to the public safety, the Administrator must consider three of the eight factors set forth in 21 U.S.C. 811(c): The substance's history and current pattern of abuse; the scope, duration and significance of abuse; and what, if any, risk there is to the public health. This consideration includes any information indicating actual abuse; diversion from legitimate channels; and clandestine importation, manufacture, or distribution of these substances.

A substance meeting the statutory requirements for temporary scheduling may only be placed in schedule I.⁶ Substances in schedule I have a high potential for abuse, no currently accepted medical use for treatment in the United States, and no accepted safety for use under medical supervision.⁷

Synthetic Cannabinoids

Synthetic cannabinoids (SCs) are substances synthesized in laboratories that mimic the biological effects of delta-9-tetrahydrocannabinol (THC, schedule I), the main psychoactive ingredient in marijuana (schedule I). SCs were introduced to the designer drug market in several European countries as "herbal incense" before the initial encounter in the United States by

the United States Customs and Border Protection (CBP) in November 2008. From 2009, abuse of SCs has escalated in the United States as evidenced by large numbers of law enforcement encounters of SCs applied onto plant material and in other designer drug products intended for human consumption.⁸ Recent hospital reports, scientific publications and/or law enforcement reports demonstrate that MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA, and their associated designer drug products, are being abused for their psychoactive properties (see Factors 5 and 6). As with many generations of SCs encountered since 2009, the abuse of MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA is negatively impacting communities in the United States.

As noted by DEA and CBP, SCs originate from foreign sources, such as China. Substances in bulk powder form are smuggled via common carrier into the United States and find their way to clandestine designer drug product manufacturing operations located in residential neighborhoods, garages, warehouses, and other similar destinations throughout the country. According to online discussion boards and law enforcement encounters, spraying or mixing the SCs with plant material provides a vehicle for the most common route of administration—smoking (using a pipe, a water pipe, or rolling the drug-laced plant material in cigarette papers).

MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA have no accepted medical use in treatment in the United States.⁹ Emergency department

⁸ While law enforcement data are not direct evidence of abuse, they can lead to an inference that drugs have been diverted and abused. See 76 FR 77330, 77332, Dec. 12, 2011.

⁹ Although there is no evidence suggesting that MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA have a currently accepted medical use in treatment in the United States, it bears noting that a drug cannot be found to have such medical use unless DEA concludes that it satisfies a five-part test. Specifically, with respect to a drug that has not been approved by FDA, to have a currently accepted medical use in treatment in the United States, all of the following must be demonstrated: i. The drug's chemistry must be known and reproducible; ii. there must be adequate safety studies; iii. there must be adequate and well-controlled studies proving efficacy; iv. the drug must be accepted by qualified experts; and v. the scientific evidence must be widely available. 57 FR 10499, Mar. 26, 1992, pet. for rev. denied, *Alliance*

² 21 U.S.C. 811(h)(1).

³ 21 U.S.C. 811(h)(2).

⁴ 21 U.S.C. 811(h)(4).

⁵ The Secretary of HHS has delegated to the Assistant Secretary for Health of HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

⁶ 21 U.S.C. 811(h)(1).

⁷ 21 U.S.C. 812(b)(1).

presentations involving MDMB-4en-PINACA or CUMYL-PEGACLONE have included seizures, sudden collapse, involuntary muscle spasms, jerking movements, catatonia, and increased violence. Multiple deaths have been reported involving MDMB-4en-PINACA, 4F-MDMB-BUTICA and CUMYL-PEGACLONE. In addition, all six SCs have been seized by law enforcement in the United States. Use of other schedule I SCs (e.g., JWH-018, AB-FUBINACA) has resulted in signs of addiction and withdrawal. Based on the pharmacological similarities between MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA and other schedule I SCs (e.g., JWH-018, AB-FUBINACA), these six SCs are likely to produce signs of addiction and withdrawal similar to those produced by other schedule I SCs (e.g., JWH-018, AB-FUBINACA).

MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA are SCs that have pharmacological effects similar to the schedule I hallucinogen THC and other temporarily and permanently controlled schedule I SCs. With no approved medical use and limited safety or toxicological information, MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA have emerged in the designer drug market, and the abuse of these substances for their psychoactive properties is concerning.

Factor 4. History and Current Pattern of Abuse

SCs have been developed by researchers over the last 30 years as tools for investigating the endocannabinoid system (e.g., determining CB1 and CB2 receptor activity). The first encounter of SCs intended for illicit use within the United States occurred in November 2008 by CBP. Since then, the popularity of SCs as product adulterants and objects of abuse has increased as evidenced by law enforcement seizures, public health information, and media reports.

Research and clinical reports have demonstrated that SCs are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and psychoactive “high,” believed to be similar to marijuana. The adulterated products are marketed as “legal” alternatives to marijuana.

The designer drug products laced with SCs, including MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA, are often sold under the guise of “herbal incense” or “potpourri,” using various product names, and are routinely labeled “not for human consumption.” Additionally, these products are marketed as a “legal high” or “legal alternative to marijuana” and are readily available over the internet, in head shops, or sold in convenience stores. There are incorrect assumptions that these products are safe, that these are synthetic forms of marijuana, and that labeling these products as “not for human consumption” is a legal defense to criminal prosecution under the Controlled Substances Analogue Enforcement Act.

The powder form of SCs is typically dissolved in solvents (e.g., acetone) before being applied to plant material, or dissolved in a propellant intended for use in electronic cigarette devices. Law enforcement personnel have encountered various application methods including buckets or cement mixers in which plant material and one or more SCs are mixed together, or in large areas where the plant material is spread out so that a dissolved SC mixture can be applied directly. Once mixed, the SC plant material is then allowed to dry before manufacturers package the product for distribution, ignoring any quality control mechanisms to prevent contamination or to ensure a uniform concentration of the substance in each package. Adverse health consequences may also occur from directly ingesting the drug during the manufacturing process. The failure to adhere to any manufacturing standards with regard to amounts, the substance(s) included, purity, or contamination may further increase the risk of adverse events. However, it is important to note that adherence to manufacturing standards would not eliminate their potential to produce adverse effects because the toxicity and safety profiles of these SCs have not been studied. MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA, similar to other schedule I SCs (e.g., JWH-018, AB-FUBINACA), have been found in powder form or mixed with dried leaves or herbal blends that were marketed for human use.

Following their manufacture in China, SCs are often encountered in countries including New Zealand, Australia, and Russia before appearing throughout Europe and eventually in the United

States. Law enforcement in the United States has encountered MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA and has documented the abuse of these substances. SCs and their associated products are available over the internet and sold in gas stations, convenience stores, and tobacco and head shops. MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA, similar to the previously scheduled SCs, have been seized alone and/or laced on products that are marketed under the guise of “herbal incense” and promoted as a “legal” alternative to marijuana.

CUMYL-PEGACLONE was detailed in a patent published in 2014, was first reported as an adulterated plant material in Germany in December 2016, and appeared in the United States in September 2018. These data further support the trend that SCs often appear in the illicit drug markets of other countries including those in Europe before being reported in the United States. Law enforcement has seized CUMYL-PEGACLONE and its abuse has been associated with overdoses requiring emergency medical intervention. Adverse effects reported following the abuse of CUMYL-PEGACLONE have included seizures followed by collapse and deaths. CUMYL-PEGACLONE has also been encountered laced onto paper in attempts to be smuggled inside of prison facilities.

Users abuse SCs by smoking for the purpose of achieving intoxication, which has resulted in numerous emergency department visits and calls to poison centers. As reported by the American Association of Poison Control Centers (AAPCC), severe, life-threatening health effects including severe agitation and anxiety, nausea, vomiting, seizures, and hallucinations can occur following ingestion of SCs. The AAPCC has specifically noted that SCs are made specifically to be abused.¹⁰ Emergency department presentations involving MDMB-4en-PINACA or CUMYL-PEGACLONE have included seizures, sudden collapse, involuntary muscle spasms, jerking movements, catatonia, or increased violence. Multiple deaths have been reported involving MDMB-4en-PINACA, 4F-MDMB-BUTICA, and CUMYL-PEGACLONE (See DEA Factor 6 in Three Factor Analysis).

for Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

¹⁰ <https://aapcc.org/track/synthetic-cannabinoids>.

Factor 5. Scope, Duration, and Significance of Abuse

Novel SCs substances, differing only by small chemical structural modifications intended to avoid prosecution while maintaining the pharmacological effects, continue to be sold on the illicit drug market as evidenced by law enforcement encounters of these substances. Law enforcement and health care professionals continue to report the abuse of these substances and their associated products. The threat of serious injury to the individual and the imminent threat to public safety following the ingestion of MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, MMB-FUBICA, and other SCs persist.

Additional information obtained through the National Forensic Laboratory Information System (NFLIS)¹¹ along with additional data may be found in DEA's Three Factor Analysis. According to NFLIS data,¹² state and local forensic laboratories have detected the following information about the SCs in question:

- MDMB-4en-PINACA was identified in 9,566 NFLIS reports since 2019. In addition, MDMB-4en-PINACA was identified in five exhibits mixed with heroin and/or fentanyl and packaged for sale as suspected heroin.
- 4F-MDMB-BUTICA was identified in 385 NFLIS reports since 2020. 4F-MDMB-BUTICA was also identified in one exhibit in a pill form, mixed with methamphetamine and a synthetic cathinone known as eutylone.
- CUMYL-PEGACLONE was identified in two CBP drug seizures in 2018 and 2021, respectively.
- 5F-EDMB-PICA was identified in 106 NFLIS reports since 2020.
- MMB-FUBICA was identified in 397 NFLIS reports since 2016.

Factor 6. What, if Any, Risk There is to the Public Health

Since first being identified in the United States in 2008, the ingestion of SCs continues to result in serious adverse effects. Details of these events involving MDMB-4en-PINACA and CUMYL-PEGACLONE are summarized below. (For additional information and citations, see DEA Factors 5 and 6 in Three Factor Analysis.)

1. In October 2017 in France, two 16-year old juveniles were given a cigarette

laced with white powder by an unknown individual. Upon arrest of the dealer, he stated the powder was SGT-151. Both juveniles developed seizures followed by collapse. Toxicological analysis of both victim's blood and blood collected from the arrested dealer (who claimed to be a user of the same powder) confirmed the presence of CUMYL-PEGACLONE (SGT-151) and its metabolite, *N*-dealkyl CUMYL-PEGACLONE (SGT-151).

2. Between January and December 2017 in Germany, CUMYL-PEGACLONE was detected in 34 forensic serum/blood samples from fatal and non-fatal cases. Of these cases, six deaths were reported by the Institute of Forensic Medicine in Munich and the Institute of Forensic Medicine in Mainz, respectively. Details of the deaths demonstrated multiple factors in addition to SCs as possible causes of death.

3. Between July 1, 2018 and December 31, 2020 in Northern Australia, CUMYL-PEGACLONE was detected in five deaths. Concurrent alcohol use and underlying cardiovascular disease were considered relevant factors in most cases. Toxicological Significance Scoring (TSS) was carefully considered in all five cases, and in four cases, the presence of CUMYL-PEGACLONE was considered to be highly significant (TSS = 3).

4. In September 2019, the Center for Forensic Science Research and Education released a report detailing the identification of MDMB-4en-PINACA in biological fluids per their toxicology department.

5. In February 2020, local law enforcement in Holyoke, MA, reported serious adverse effects following the abuse of the contents in glassine bags with suspected heroin. Analysis of contents in the bags confirmed the presence of MDMB-4en-PINACA. Per law enforcement witnesses to the overdoses, individuals were experiencing involuntary body/muscle spasms and movements that appeared similar to a seizure, although more violent. Victims were alert and conscious and they appeared to be under the influence of some unknown narcotics at the time, with officers noting that what was observed was nothing like a typical heroin overdose. Victims described it like being under the influence of PCP (schedule II substance) or something similar. In some cases, people were violent and emergency personnel were having a difficult time providing medical attention to these individuals. Emergency personnel also described very high heart rates and blood

pressure. Some individuals were acting erratic and running in and out of traffic.

6. In March 2021, a forensic toxicology report from the Defense Health Agency reported the presence of ADB-BUTINACA, ADB-BUTINACA *N*-butanoic acid (a metabolite of ADB-BUTINACA), and MDMB-4en-PINACA 3,3-dimethylbutanoic acid (a metabolite of MDMB-4en-PINACA) in a submitted urine specimen.

7. MDMB-4en-PINACA and/or its metabolite were detected in 25 forensic investigation cases between August 2019 and March 2020. The first positive sample was collected in May 2019. The majority of cases (n = 16, 64%) were submitted from postmortem investigations, followed by eight cases from suspected clinical toxicology investigations, and one case from an impaired driving investigation.

Because they share pharmacological similarities with schedule I substances (Δ^9 -THC, JWH-018, and other temporarily and permanently controlled schedule I SCs), MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA pose serious risks to an abuser. Tolerance to SCs may develop fairly rapidly with larger doses being required to achieve the desired effect. Acute and chronic abuse of SCs in general have been linked to adverse health effects including signs of addiction and withdrawal, numerous reports of emergency department admissions, and overall toxicity and deaths. Psychiatric case reports have been reported in the scientific literature detailing the SC abuse and associated psychoses (See DEA Factor 6 in Three Factor Analysis). As abusers obtain these drugs through unknown sources, the identity and purity of these substances is uncertain and inconsistent, thus posing significant adverse health risks to users.

MDMB-4en-PINACA, 4F-MDMB-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA are being encountered on the illicit drug market and have no accepted medical use in the United States. Regardless, these products continue to be easily available and abused by diverse populations.

Finding of Necessity of Schedule I Placement To Avoid Imminent Hazard to Public Safety

In accordance with 21 U.S.C. 811(h)(3), based on the available data and information summarized above, the uncontrolled manufacture, distribution, reverse distribution, importation, exportation, conduct of research and chemical analysis with, possession, and

¹¹ NFLIS is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by State and local forensic laboratories in the United States.

¹² At the time of query (March 16, 2022), 2021 and 2022 data were still reporting.

abuse of MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, or MMB-FUBICA, resulting from the lack of control of these substances, pose an imminent hazard to the public safety. DEA is not aware of any currently accepted medical uses for these substances in the United States. A substance meeting the statutory requirements for temporary scheduling, found in 21 U.S.C. 811(h)(1), may only be placed in schedule I. Substances in schedule I are those that have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. Available data and information for MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA indicate that these substances have a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use under medical supervision. As required by 21 U.S.C. 811(h)(4), the Administrator, through a letter dated January 24, 2022, notified the Assistant Secretary of DEA's intention to temporarily place MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in schedule I.

Conclusion

This notice of intent provides the 30-day notice pursuant to 21 U.S.C. 811(h)(1) of DEA's intent to issue a temporary scheduling order. In accordance with 21 U.S.C. 811(h)(1) and (3), the Administrator considered available data and information, herein set forth the grounds for her determination that it is necessary to temporarily schedule MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in schedule I of the CSA, and finds that placement of these substances in schedule I of the CSA is necessary in order to avoid an imminent hazard to the public's safety.

The temporary placement of MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in schedule I of the CSA will take effect pursuant to a temporary scheduling order, which will not be issued before May 4, 2023. Because the Administrator hereby finds that it is necessary to temporarily place MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA in schedule I to

avoid an imminent hazard to the public safety, the temporary order scheduling these substances will be effective on the date the order is published in the **Federal Register**, and will be in effect for a period of two years, with a possible extension of one additional year, pending completion of the regular (permanent) scheduling process.¹³ It is the intention of the Administrator to issue a temporary scheduling order as soon as possible after the expiration of 30 days from the date of publication of this document. Upon publication of the temporary order, MDMA-4en-PINACA, 4F-MDMA-BUTICA, ADB-4en-PINACA, CUMYL-PEGACLONE, 5F-EDMB-PICA, and MMB-FUBICA will then be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, importation, exportation, research, conduct of instructional activities and chemical analysis with, and possession. The CSA sets forth specific criteria for scheduling a drug or other substance. Regular scheduling actions in accordance with 21 U.S.C. 811(a) are subject to formal rulemaking procedures done "on the record after opportunity for a hearing" conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. Temporary scheduling orders are not subject to judicial review.¹⁴

Regulatory Analyses

The CSA provides for expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety.¹⁵ As provided in 21 U.S.C. 811(h)(1), the Administrator (as delegated by the Attorney General) may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from: (1) The publication of a notice in the **Federal Register** of the intent to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of

the proposed temporary scheduling order is transmitted to the Assistant Secretary for Health of HHS, as delegated by the Secretary of HHS.

Inasmuch as this section directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, including the requirement of a publication in the **Federal Register** of a notice of intent, the notice-and-comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. The APA expressly differentiates between an order and a rule, as it defines an "order" to mean a "final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making."¹⁶ The specific language chosen by Congress indicates an intention for DEA to proceed through the issuance of an *order* instead of proceeding by rulemaking when temporarily scheduling substances. Given that Congress specifically requires the Administrator to follow rulemaking procedures for *other* kinds of scheduling actions, *see* 21 U.S.C. 811(a), it is noteworthy that, in 21 U.S.C. 811(h)(1), Congress authorized the issuance of temporary scheduling actions by order rather than by rule.

In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice-and-comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice-and-comment requirements of section 553 of the APA, DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator took into consideration comments submitted by the Assistant Secretary in response to the notice that DEA transmitted to the Assistant Secretary pursuant to such subsection.

Further, DEA believes that this notice of intent is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act. The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) only apply when DEA is required, under 5 U.S.C. 553, to issue a

¹³ 21 U.S.C. 811(h)(1) and (2).

¹⁴ 21 U.S.C. 811(h)(6). This contrasts with permanent scheduling actions which are subject to formal rulemaking procedures done "on the record after opportunity for a hearing," and final decisions that conclude the scheduling process are subject to judicial review. *See* 21 U.S.C. 811(a) and 877.

¹⁵ 21 U.S.C. 811(h)(1).

¹⁶ 5 U.S.C. 551(6) (emphasis added).

notice of proposed rulemaking. As discussed above, DEA is issuing this notice of intent pursuant to DEA's authority to issue a temporary scheduling order. See 21 U.S.C. 811(h)(1). Therefore, because DEA believes this temporary scheduling action is not a "rule," DEA is not subject to the requirements of the Regulatory Flexibility Act when issuing this temporary action.

In accordance with the principles of Executive Orders (E.O.) 12866 and 13563, this notice of intent is not a significant regulatory action. E.O. 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). E.O. 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in E.O. 12866.

E.O. 12866 classifies a "significant regulatory action," requiring review by the Office of Management and Budget, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Because this is not a rulemaking action, this is not a significant regulatory action as defined in Section 3(f) of E.O. 12866.

This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism Assessment.

Signing Authority

This document of the Drug Enforcement Administration was signed on March 29, 2023, by Administrator

Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug Traffic control, Reporting and Recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraphs (h)(57) through (62) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(57) Methyl 3,3-dimethyl-2-(1-(pent-4-en-1-yl)-1H-indazole-3-carboxamido)butanoate, its optical and geometric isomers, salts and salts of isomers (Other name: MDMA-4en-PINACA) 7090

(58) Methyl 2-[[1-(4-fluorobutyl)indole-3-carbonyl]amino]-3,3-dimethylbutanoate, its optical and geometric isomers, salts and salts of isomers (Other names: 4F-MDMB-BUTICA; 4F-MDMB-BICA) 7091

(59) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(pent-4-en-1-yl)-1H-indazole-3-carboxamide, its optical and geometric isomers, salts and salts of isomers (Other name: ADB-4en-PINACA) 7092

(60) 5-Pentyl-2-(2-phenylpropan-2-yl)pyrido[4,3-b]indol-1-one, its optical and geometric isomers, salts and salts of isomers (Other names: CUMYL-PEGACLONE; SGT-151) 7093

(61) Ethyl 2-[[1-(5-fluoropentyl)indole-3-carbonyl]amino]-3,3-dimethylbutanoate, its optical and geometric isomers, salts and salts of isomers (Other names: 5F-EDMB-PICA; 5F-EDMB-2201) 7094

(62) Methyl 2-(1-(4-fluorobenzyl)-1H-indole-3-carboxamido)-3-methyl butanoate, its optical and geometric isomers, salts and salts of isomers (Other name: MMB-FUBICA) 7095

* * * * *

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023-06893 Filed 4-3-23; 8:45 am]

BILLING CODE 4410-09-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2022-0927; FRL-10657-03-R6]

Determination of Attainment by the Attainment Date but for International Emissions for the 2015 Ozone National Ambient Air Quality Standard; El Paso-Las Cruces, Texas-New Mexico; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule "Determination of Attainment by the Attainment Date But For International Emissions for the 2015 Ozone National Ambient Air Quality Standard; El Paso-Las Cruces, Texas-New Mexico" that was published on March 7, 2023. The proposal provided for a public comment period ending April 6, 2023. The EPA received a request from the public to extend this comment period. The EPA is extending the comment period to May 8, 2023.

DATES: The comment period for the proposed rule published March 7, 2023 (88 FR 14095), is extended. Written comments must be received on or before May 8, 2023.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2022-0927, at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be

accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, EPA Region 6 Office, (AR-SI), 214-665-6454, fuerst.sherry@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

On March 7, 2023, we published in the **Federal Register** “Determination of Attainment by the Attainment Date But For International Emissions for the 2015 Ozone National Ambient Air Quality Standard; El Paso-Las Cruces, Texas-New Mexico”, where we proposed to determine that the El Paso-Las Cruces, Texas-New Mexico nonattainment area would have attained the 2015 ozone national ambient air quality standard (NAAQS) by the August 3, 2021 “Marginal” Area attainment date, but

for emissions emanating from outside the United States (88 FR 14095). We received a request for an extension of the comment period and, in response, have decided to allow an additional 30 days for the public to comment. The comment period will now close on May 8, 2023. This action will allow interested persons additional time to prepare and submit comments on the proposed action listed above.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Pollution, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 29, 2023.

David Garcia,

Director, Air and Radiation Division, Region 6.

[FR Doc. 2023-06892 Filed 4-3-23; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 88, No. 64

Tuesday, April 4, 2023

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.

UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Tuesday, April 25, 2023, 9:00 a.m. to 12:00 noon.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kerline Perry, (202) 344-9883.

Authority: Public Law 96-533 (22 U.S.C. 290h).

Dated: March 29, 2023.

Wendy Carver,

Business Manager.

[FR Doc. 2023-06905 Filed 4-3-23; 8:45 am]

BILLING CODE 6117-01-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are requested regarding; 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; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the

quality, utility and clarity of the information to be collected; and 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.

Comments regarding this information collection received by May 4, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency 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.

Animal and Plant Health Inspection Service

Title: Interstate Movement of Certain Land Tortoises.

OMB Control Number: 0579-0156.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to prevent, control, and eliminate domestic diseases as well as to take actions to prevent and to manage exotic diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the United States' ability to compete in the world market of animal and animal product trade. The AHPA is contained in Title X, Subtitle E, sections 10401 to 10418 of Public Law 107-171, May 13, 2002, the Farm Security and Rural Investment Act of 2002 [7 U.S.C. 8301 *et seq.*].

Title 9 CFR part 74 currently prohibits the importation and restricts the interstate movement of three tortoise species: The leopard tortoise, the African spurred tortoise, and the Bell's

hingeback tortoise. APHIS implemented these restrictions in 2001 to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants.

Need and Use of the Information: APHIS will collect information to ensure that the interstate movement of these leopard, African spurred, and Bell's hingeback tortoises poses no risk of spreading exotic ticks within the United States. Owners and veterinarians are required to provide the following information to Federal or accredited veterinarians for completion of the health certificate: Name, address, and telephone number of the owner; information identifying the animal such as collar or tattoo number; breed; age; sex; color; distinctive marks; vaccination history; and certifications from both the owner and the veterinarian that all information is true and accurate. APHIS uses the information it collects to identify each specific tortoise and documenting the State of the animal's health so that the animals can be transported across State and national boundaries. If the information is not collected APHIS would be forced to ban the interstate movement of all leopard, African spurred, and Bell's hingeback tortoises, causing economically harm to U.S. tortoise breeders.

Description of Respondents: Private and Commercial Animal Breeders, and Veterinarians.

Number of Respondents: 50.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 375.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023-06898 Filed 4-3-23; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Improving Coordination Between SNAP and Medicaid in State Agencies

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for (1) identifying and describing relevant federal statutory, regulatory, and operational barriers and facilitators that have considerable impact on coordination between the Supplemental Nutrition Assistance Program (SNAP) and Medicaid agencies; (2) identifying and describing relevant State statutory, regulator, and operational barriers and facilitators that have considerable impact on coordination between SNAP and Medicaid agencies; (3) identifying and describing systems used by States to determine eligibility and manage SNAP and Medicaid application and recertification information; (4) identifying and describing similarities and differences in State SNAP and Medicaid applications; and (5) using information collected from Objectives 1–4 to develop a Best Practices Guide that explains how States can better improve coordination between SNAP and Medicaid.

DATES: Written comments must be received on or before June 5, 2023.

ADDRESSES: *Comments may be sent to:* Michael Burke, Senior Social Science Research Analyst, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. Comments may also be submitted via email to michael.burke@usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions or submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday at Braddock Metro Center II, 1320 Braddock Place, Alexandria, VA 22314.

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

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this information collected should be directed to Michael Burke by email at michael.burke@usda.gov or by phone at (703) 305–4369.

SUPPLEMENTARY INFORMATION: Comments are invited on (a) whether the proposed collection of information is necessary

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

Title: Improving Coordination Between SNAP and Medicaid in State Agencies.

Form Number: Not applicable.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: This is a new information collection request. SNAP and Medicaid serve similar populations, which provides opportunities for State Agencies administering the programs to coordinate policies and processes to improve efficiency, customer service, and program access. This study will conduct case studies in up to five states to understand the challenges with improving program coordination and highlight the best practices that could be shared with other states. FNS has identified five objectives for this study:

1. Identify and describe relevant federal statutory, regulatory, and operational barriers and facilitators that have considerable impact on coordination between SNAP and Medicaid agencies.
2. Identify and describe relevant State statutory, regulatory, and operational barriers and facilitators that have considerable impact on coordination between SNAP and Medicaid agencies.
3. Identify and describe systems used by States to determine eligibility and manage SNAP and Medicaid application and recertification information.
4. Identify and describe similarities and differences in State SNAP and Medicaid applications.
5. Using information collected from Objectives 1–4, develop a Best Practices Guide that explains how States can better improve coordination between SNAP and Medicaid.

Affected Public: Members of the public affected by the data collection include (1) State and local governments, (2) business not-for-profit organizations, or (3) business for-profit agencies.

Case Studies: FNS will reach out to a maximum of ten States to participate in

in-depth case studies and expects five to participate. The case studies will involve semi-structured interviews with policy and program administrators and staff of State SNAP and Medicaid agencies, data systems staff from SNAP and Medicaid offices, local SNAP and Medicaid offices, and community-based providers that assist in SNAP and Medicaid application and renewals. After recruiting the five State SNAP and Medicaid agencies, FNS expects one selected local SNAP agency and one selected local Medicaid office to participate in each State. FNS expects that approximately 50 percent of individuals invited to participate will choose not to participate and oversampled to account for nonresponse.

Respondent groups identified for the case studies include the following:

- State and local government
 - State Government or territory SNAP Directors and policy staff (5 case study recruitment respondents, 5 case study recruitment nonrespondents, 15 case study interview respondents, and 0 case study nonrespondents)
 - State Government or territory Medicaid Directors (5 case study recruitment respondents, 5 case study recruitment nonrespondents, 15 case study interview respondents, and 0 case study nonrespondents)
 - State or territory Medicaid Director and policy staff (15 case study interview respondents, and 0 case study nonrespondents)
 - State or territory data staff (15 case study interview respondents, and 0 case study nonrespondents)
 - Local SNAP office administrator (10 case study respondents and 0 case study nonrespondents)
 - Local SNAP office frontline staff (20 case study respondents and 0 case study nonrespondents)
 - Local Medicaid office administrator (10 case study respondents and 0 case study nonrespondents)
 - Local Medicaid office frontline staff (20 case study respondents and 0 case study nonrespondents)
- Business for-profit organizations (5 case study recruitment respondents, 5 case study recruitment nonrespondents, 15 case study respondents, and 0 case study nonrespondents)
- Business not-for-profit organizations (5 case study recruitment respondents, 5 case study recruitment nonrespondents, 15 case study respondents and 0 study non respondents)

Estimated Number of Respondents:

The total estimated number of respondents is 155 (115 State and local government staff, 20 business not-for-profit organizations, 20 business for-profit organizations). Of the 155 contacted, 135 are estimated to be responsive and 20 are estimated to be nonresponsive. This includes:

- 10 State or territory SNAP directors will participate in recruitment calls (a max of 5 States will participate in the case studies)
- 10 State or territory Medicaid directors will participate in recruitment calls (a max of 5 States will participate in the case studies)
- 15 State or territory SNAP directors and policy staff will participate in a semi-structured interview (five State directors will have participated in recruitment calls and interviews; 100 percent of whom will be asked to review and provide feedback on the process map)
- 15 State or territory Medicaid directors and policy staff will participate in a semi-structured interview (five State directors will have participated in recruitment calls and interviews; 100 percent of whom will be asked to review and provide feedback on the process map)
- 15 State or territory data staff will participate in a semi-structured interview (100 percent of whom will be asked to review and provide feedback on the process map)
- 10 local SNAP office administrators will participate in a semi-structured interview
- 10 local Medicaid office administrators will participate in a semi-structured interview
- 20 local SNAP office frontline staff will participate in a semi-structured interview
- 20 local Medicaid office frontline staff will participate in a semi-structured interview
- 10 business for-profit organizations will participate in a recruitment call (a max of five will participate in semi-structured interviews)
- 10 business not-for-profit organizations will participate in a recruitment call (a max of five will participate in semi-structured interviews)
- 15 business for-profit organizations will participate in a semi-structured interview (five community partner directors will have participated in recruitment calls and semi-structured interviews)
- 15 business non-for-profit organizations will participate in a semi-structured interview (five

community partner directors will have participated in recruitment calls and semi-structured interviews)

Estimated Number of Responses per Respondent: 2.42 (2.56 for responsive participants and 1.50 for nonresponsive participants).

Estimated Total Annual Responses: 375 (345 annual responses for responsive participants and 30 annual responses for nonresponsive participants).

Estimated Time per Response: .53 hours (.52 for responsive participants and .68 for nonresponsive participants).

The estimated time of response varies from 0.5 to 1.0357 hours (30 minutes to 62 minutes), depending on the respondent group and activity, as shown in the table below, with an average estimated time of 0.53 hours (32 minutes) for all responses. The average estimated time is calculated by dividing the 198.21 estimated total hours for responses in the table below by the 375 total estimated responses.

Estimated Total Annual Burden on Respondents: 198.21 hours (177.86 for responsive participants and 20.36 for nonresponsive participants). See the table below for estimated total annual burden for each type of respondent by data collection activity including the non-responses.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2023-06956 Filed 4-3-23; 8:45 am]

BILLING CODE 3410-30-P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the West Virginia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the West Virginia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a series of planning meetings via web conference. The purpose of these meetings is to discuss and plan matters related to the Committee's civil rights project on the civil rights impact of WV public school disciplinary policies, practices and procedures on students of color, students with disabilities and LGBTQ+ students.

DATES:

- Thursday, April 6, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, May 4, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, June 1, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, July 6, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, August 3, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, September 7, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, October 5, 2023, from 3:00 p.m.–4:00 p.m. ET
- Thursday, November 2, 2023, from 3:00 p.m.–4:00 p.m. ET

ADDRESSES: The meetings will be held via Zoom.

Meeting Link (Audio/Visual): <https://www.zoomgov.com/j/1603603569>.

Join by Phone (Audio Only): Dial: 1-833-435-1820 USA Toll Free; Meeting ID: 160 360 3569#.

FOR FURTHER INFORMATION CONTACT: Ivy Davis, DFO, at idavis@usccr.gov.

SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the meeting link or telephone number listed above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Live transcription will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email svillanueva@usccr.gov at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at svillanueva@usccr.gov. Persons who desire additional information may call the Regional Programs Unit at 1-202-769-2843.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via www.facadatabase.gov under the Commission on Civil Rights, West Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <https://>

www.usccr.gov, or may contact the Regional Programs Coordination Unit at the above email.

Agenda

- I. Meeting Announcement & Roll Call
- II. Welcome
- III. Project Planning
- IV. Other Business
- V. Next Meeting
- VI. Public Comment
- VII. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the staffing shortage.

Dated: March 30, 2023.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2023–06965 Filed 4–3–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Integrated Economic Survey

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 21, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Annual Integrated Economic Survey.

OMB Control Number: None.

Form Number(s): This electronic collection has no form number.

Type of Request: Regular submission, New Information Collection Request.

Number of Respondents: Dress Rehearsal—8,470 and 50 debriefing interviews; Full AIES—384,940.

Average Hours per Response: Dress Rehearsal—3 hours and 55 minutes,

Debriefing interviews—1 hour; Full AIES—3 hours and 23 minutes.

Burden Hours: Dress Rehearsal—33,206 hours, Debriefing interviews—50 hours; Full AIES—1,300,535 hours.

Needs and Uses: The U.S. Census Bureau requests Office of Management and Budget (OMB) approval to conduct the Annual Integrated Economic Survey (AIES) on an annual basis, beginning for survey year 2023 (collected in calendar year 2024) and a preparatory Dress Rehearsal for the AIES for survey year 2022 (collected in calendar year 2023). The AIES is a new survey designed to integrate and replace seven existing annual business surveys into one survey. The AIES will provide the only comprehensive national and subnational data on business revenues, expenses, and assets on an annual basis. The AIES is designed to combine Census Bureau collections to reduce respondent burden, increase data quality, and allow the Census Bureau to operate more efficiently to reduce long term costs. The existing collections integrated into the AIES are the Annual Retail Trade Survey (ARTS), Annual Wholesale Trade Survey (AWTS), Service Annual Survey (SAS), Annual Survey of Manufactures (ASM), Annual Capital Expenditures Survey (ACES), Manufacturers' Unfilled Orders Survey (M3UFO), and the Report of Organization.

The AIES will collect the following information from employer businesses in sample:

- Business characteristics, including employment, operating status, organizational change, ownership information, and co-op status
- Business classification, including business activity, type of operation, and tax status
- Revenue, including sales, shipments, and receipts, revenue by class of customer, taxes, contributions, gifts, and grants, products, and e-commerce activity
- Operating expenses, including purchased services, payroll, benefits, rental payments, utilities, interest, resales, equipment, materials and supplies, research and development, and other detailed operating expenses
- Assets, including capital expenditures, inventories, and depreciable assets
- Robotic equipment

Additional topics of collections in the AIES include sources of revenue and/or expense for providers (e.g., hospitals and other businesses in the health industry) of select services such as inpatient days, outpatient visits to hospitals, patient visits for other

selected health industries, revenue from telemedicine services, and expenses for electronic health records. Product data will be collected from businesses operating in manufacturing industries. Merchandise lines data will be collected from businesses operating in select retail industries. Detailed inventories will be collected for trucks, truck tractors, and trailers.

The AIES may include new questions each year based on relevant business topics. Potential topics for such new questions could include technological advances, management and business practices, exporting practices, and globalization. Any new questions will be submitted to OMB for review using the appropriate clearance vehicle.

Beginning in August of 2023, the Census Bureau plans to conduct a Dress Rehearsal for the AIES with approximately 8,470 companies. The Dress Rehearsal will collect survey year 2022 information. The Dress Rehearsal will be a large-scale test of the forms and procedures planned for the AIES. The burden estimate is 3 hours and 55 minutes per respondent. The Dress rehearsal will allow us to examine patterns of non-response and to determine what additional support respondents will need. Paradata gathered from respondents' interactions with the online collection instrument during the Dress Rehearsal will help refine our burden estimate. We will also compare the quality of responses received to historical data collected in the 7 surveys the AIES will replace. Up to 50, 1-hour debriefing interviews with respondents will also be conducted.

To minimize the burden imposed on most respondents already in sample for the seven annual surveys the AIES will replace, we will use the AIES responses from companies that participate in the Dress Rehearsal to satisfy their reporting requirement for the annual survey(s) for which they are in sample for the 2022 survey year. Given that the AIES Dress Rehearsal will be conducted during the same calendar year as we will be conducting the 2022 Economic Census, we may use the AIES Dress Rehearsal to supplement Economic Census responses, pursuant to title 13 U.S.C. 193.

After conclusion of the Dress Rehearsal, and based on refinements made to forms and procedures, the Census Bureau will begin conducting the full-scale AIES in 2024, collecting survey year 2023 information. The AIES will select a stratified sequential random sample of approximately 384,940 companies from a frame of approximately 5.4 million companies

constructed from the BR, which is the Census Bureau's master business list.

The AIES covers domestic, nonfarm employer businesses with operations during the survey year. Non-employer businesses are not within the scope of this new AIES. The Census Bureau will submit a separate request for approval to collect data from non-employer businesses, if it is determined that a collection is needed to produce those estimates. Businesses which reported business activity on Internal Revenue Service (IRS) tax forms 941, "Employer's Quarterly Federal Tax Return"; 944, "Employer's Annual Federal Tax Return"; 1065 "U.S. Return of Partnership Income"; or any one of the 1120 corporate tax forms will be eligible for selection.

Respondents will receive an email and/or letter notifying them of their requirement to respond and how to access the survey. Responses will be due approximately 30 days from receipt. Select businesses will receive a due date reminder via a letter or email prior to the due date. Additionally, email follow-ups and up to three mail follow-ups to nonrespondents will be conducted at approximately one-month intervals. Selected nonrespondents will receive a priority class mailing for the third follow-up if needed. Selected nonrespondents will also receive follow-up telephone calls.

The AIES will replace the ARTS, AWTS, SAS, ASM, ACES, M3UFO, and the Report of Organization for survey year 2023, at which time the Census Bureau will officially sunset these programs. The ASM and the Report of Organization completed their final year of data collection in survey year 2021. ACES, ARTS, AWTS, SAS, and M3UFO will complete their final year of data collection in survey year 2022.

The Census Bureau will submit a revision request to OMB prior to conducting the full-scale AIES to finalize any details presented in this request that may change.

Estimates currently published in ARTS, AWTS, SAS, ASM, and ACES will be produced as part of the AIES and expanded to include subnational data across the economy. Previously, the ASM (manufacturing) was the only annual survey being integrated into the AIES that produced subnational data. The AIES will produce subnational data for manufacturing, retail, wholesale, and service sectors if quality standards are met. The AIES information previously collected on the Report of Organization will continue to be used to update the Census Bureau's BR, and the AIES data previously collected on the M3UFO will continue to be used for the

Manufacturers' Shipments, Inventories, and Orders (M3) Survey benchmarking purposes. Data users will be able to access the AIES estimates through the use of visualizations, CSV files, *data.census.gov*, and the Federal Reserve Economic Data (FRED), which is an online database maintained by the Federal Reserve Bank of St. Louis.

Private businesses, organizations, industry analysts, educators and students, and economic researchers have used the data and estimates provided by the ARTS, AWTS, SAS, ASM, and ACES collections for analyzing and conducting impact evaluations on past and current economic performance, short-term economic forecasts, productivity, long-term economic growth, market analysis, tax policy, capacity utilization, business fixed capital stocks and capital formation, domestic and international competitiveness trade policy, product development, market research, and financial analysis. Trade and professional organizations have used the estimates to analyze industry trends and benchmark their own statistical programs, develop forecasts, and evaluate regulatory requirements. Government program officials and agencies have used the data for research, economic policy making, and forecasting.

Based on the use of the data of the existing collections, estimates produced from the AIES will serve as a benchmark for Census Bureau indicator programs, such as the Advance Monthly Sales for Retail and Food Services (MARTS), the Monthly Retail Trade Survey (MRTS), Manufacturers' Shipments Inventories & Orders (M3), Monthly Wholesale Trade Survey (MWTS), and the Quarterly Services Survey (QSS). Like the previous collections, the AIES will provide updates to the Longitudinal Research Database (LRD), and Census Bureau staff and academic researchers with special sworn status will continue to use the LRD for micro data analysis. The Census Bureau will also continue to use information collected in the AIES to update and maintain the centralized, multipurpose BR that provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses.

The Bureau of Economic Analysis (BEA) will continue to use the estimates to derive industry output for the input-output accounts and for the gross domestic product (GDP). The Bureau of Labor Statistics (BLS) will continue to use the data as input to its Producer Price Index (PPI) and in developing productivity measurements; the Federal Reserve Board (FRB) will continue to

use the data to prepare the Index of Industrial Production, to improve estimates of investment indicators for monetary policy, and in monitoring retail credit lending; the Centers for Medicare and Medicaid Services (CMS) will continue to use the data to estimate expenditures for the National Health Accounts and for monitoring and evaluating healthcare industries; and the Department of the Treasury will continue to use the data to analyze depreciation and to research economic trends.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: The AIES collection is authorized by title 13 U.S.C. 131, 182, and 193. Response to the AIES is mandatory per sections 224 and 225 of title 13 U.S.C.

This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-06947 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Census Bureau

National Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the National Advisory Committee on Racial, Ethnic and Other Populations (NAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including the decennial census, demographic and economic statistical programs, field operations, and information technology. Last minute changes to the schedule are possible, which could prevent giving

advance public notice of schedule adjustments.

DATES: The virtual meeting will be held on:

- Thursday, May 4, 2023, from 8:30 a.m. to 5:00 p.m. ET, and
- Friday, May 5, 2023, from 8:30 a.m. to 2:30 p.m. ET.

ADDRESSES: Please visit the Census Advisory Committee website at <https://www.census.gov/about/cac/nac/meetings/2023-5-meeting.html>, for the NAC meeting information, including the agenda, and how to view the meeting.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), shana.j.banks@census.gov, Department of Commerce, Census Bureau, telephone 301-763-3815. For TTY callers, please use the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: The NAC provides technical expertise to address Census Bureau program needs and objectives. The members of the NAC are appointed by the Director of the Census Bureau. The NAC has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. Public comments will be accepted in written form via email to shana.j.banks@census.gov, (subject line “2023 NAC Spring Virtual Meeting Public Comment”). A brief period will be set aside during the virtual meeting to read public comments received by noon ET, May 4, 2023. All public comments received will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 27, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023-06926 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-07-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-23-2023]

Foreign-Trade Zone (FTZ) 136, Notification of Proposed Production Activity; Airbus OneWeb Satellites, North America LLC; (Satellites and Satellite Systems); Merritt Island, Florida

Airbus OneWeb Satellites, North America LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Merritt Island, Florida, within FTZ 136. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on March 28, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/ component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz. The proposed material(s)/ component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include: titanium fittings, screws, and washers; krypton gas; fabricated aluminum parts (for balancing satellites and simulating mass or gravity); gyroscopes with or without automatic pilots; rustproof nickel-copper staples; copper wire thermal straps; and, aluminum pipe (duty rate ranges from duty-free to 5.5%). The request indicates that certain materials/ components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232) or section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is May 15, 2023.

A copy of the notification will be available for public inspection in the “Online FTZ Information System” section of the Board's website.

For further information, contact Juanita Chen at juanita.chen@trade.gov.

Dated: March 29, 2023.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023-06868 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-57-2022]

Foreign-Trade Zone (FTZ) 38; Authorization of Production Activity; BMW Manufacturing Company, LLC; (Passenger Motor Vehicles); Spartanburg, South Carolina

On November 29, 2022, BMW Manufacturing Company, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 38A, in Spartanburg, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 75025, December 7, 2022). On March 29, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: March 29, 2023

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2023-06867 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; Azur Air, Sharypovo Airport, 404/1 Kozhevnikheskiy Land, Moscow, Russia

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730-774 (“EAR” or “the Regulations”),¹ I hereby grant the

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701

request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on October 3, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 7, 2022, I signed an order denying Azur Air’s (“Azur”) export privileges for a period of 180 days on the ground that issuance of the order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.³ The renewal order issued on October 3, 2022 and was effective upon issuance.⁴

On March 7, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on October 3, 2022. The written request was made more than 20 days before the TDO’s scheduled expiration. A copy of the renewal request was sent to Azur in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that

a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (section 746.8(a)(1) of the EAR).⁵ BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (section 740.15 of the EAR).⁶ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin

content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

This OEE request for renewal is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 3, 2022, as well as other evidence developed during this investigation. These facts and evidence demonstrate that Azur continues to act in blatant disregard for U.S. export controls and the applicable TDO. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence that Azur engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022, from destinations including, but not limited to, Nha Trang, Vietnam, Dubai, United Arab Emirates, and Antalya, Turkey, without the required BIS authorization.⁷ Further evidence submitted by BIS indicated that Azur was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the October 3, 2022 renewal order, evidence presented by BIS indicated that, after the initial order issued, Azur continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.⁸ Specifically, the October 3, 2022 renewal order detailed Azur’s continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Antalya, Turkey, Dalaman, Turkey, and Bodrum, Turkey.⁹

Since that time, Azur has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its March 7, 2023 request for renewal of the TDO, BIS submitted evidence that Azur

et seq. (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21614).

³ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60983).

⁵ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁶ 87 FR 13048 (Mar. 8, 2022).

⁷ Publicly available flight tracking information shows that on March 6, 2022, serial number (SN) 27612 flew from Nha Trang, Vietnam to Moscow, Russia and on March 10, 2022, SN 27909 flew from Dubai, UAE to Vladivostok, Russia. In addition, on March 17, 2022, SN 21614 flew from Antalya, Turkey to Kazan, Russia.

⁸ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

⁹ Publicly available flight tracking information shows that SN 29377 flew from Antalya, Turkey to Moscow, Russia on September 21, 2022. In addition, on September 20, 2022, SN 26271 flew from Bodrum, Turkey to Moscow, Russia and SN 30045 flew from Dalaman, Turkey to Yekaterinburg, Russia.

is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the October 3, 2022 TDO and/or the Regulations. Specifically,

BIS's evidence and related investigation demonstrates that Azur has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to

Hurghada, Egypt, Goa, India, and Phuket, Thailand. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73071	29377	757-2Q8 (B752)	Adana, TR/Moscow, RU	March 13, 2023.
RA-73071	29377	757-2Q8 (B752)	Sharm el-Sheikh, EG/Moscow, RU	March 14, 2023.
RA-73071	29377	757-2Q8 (B752)	Dubai, AE/Moscow, RU	March 15, 2023.
RA-73071	29377	757-2Q8 (B752)	Hurghada, EG/Moscow, RU	March 18, 2023.
RA-73077	30045	757-2Q8 (B752)	Goa, IN/Perm, RU	March 3, 2023.
RA-73077	30045	757-2Q8 (B752)	Rayong, TH/Kemerovo, RU	March 6, 2023.
RA-73077	30045	757-2Q8 (B752)	Phuket, TH/Novosibirsk, RU	March 12, 2023.
RA-73077	30045	757-2Q8 (B752)	Rayong, TH/Kemerovo, RU	March 16, 2023.
RA-73079	24947	767-3Y0 (ER) B763	Male, MV/Moscow, RU	February 18, 2023.
RA-73079	24947	767-3Y0 (ER) B763	Colombo, LK/Moscow, RU	February 28, 2023.
RA-73079	24947	767-3Y0 (ER) B763	Dubai, AE/Moscow, RU	March 1, 2023.
RA-73079	24947	767-3Y0 (ER) B763	Phuket, TH/Moscow, RU	March 5, 2023.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that Azur has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with Azur, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, Azur Air, Sharypovo Airport, 404/1 Kozhevnikeskiy Lane, Moscow, Russia, when acting for or on their behalf, any successors or assigns, agents, or employees 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 EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), 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 EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of 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 EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of Azur any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by Azur of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby Azur acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from Azur of any item subject to the EAR that has been exported from the United States except

directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from Azur in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by Azur, or service any item, of whatever origin, that is owned, possessed or controlled by Azur if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Azur 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 accordance with the provisions of sections 766.24(e) of the EAR, Azur may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by Azur as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to Azur, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023-06907 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Renewing Temporary Denial of Export Privileges; UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region, Russia 628012

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (“EAR” or “the Regulations”),¹ I hereby grant the request of the Office of Export Enforcement (“OEE”) to renew the temporary denial order (“TDO”) issued in this matter on October 3, 2022. I find that renewal of this order is necessary in the public interest to prevent an imminent violation of the Regulations.

I. Procedural History

On April 7, 2022, I signed an order denying UTair Aviation JSC’s (“UTair”) export privileges for a period of 180 days on the ground that issuance of the

order was necessary in the public interest to prevent an imminent violation of the Regulations. The order was issued *ex parte* pursuant to section 766.24(a) of the Regulations and was effective upon issuance.² This temporary denial order was subsequently renewed in accordance with section 766.24(d) of the Regulations.³ The renewal order issued on October 3, 2022 and was effective upon issuance.⁴

On March 7, 2023, BIS, through OEE, submitted a written request for renewal of the TDO that issued on October 3, 2022. The written request was made more than 20 days before the TDO’s scheduled expiration. A copy of the renewal request was sent to UTair in accordance with sections 766.5 and 766.24(d) of the Regulations. No opposition to the renewal of the TDO has been received.

II. Renewal of the TDO

A. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent’s export privileges upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge “is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

² The TDO was published in the **Federal Register** on April 12, 2022 (87 FR 21616).

³ Section 766.24(d) provides that BIS may seek renewal of a temporary denial order for additional 180-day renewal periods, if it believes that renewal is necessary in the public interest to prevent an imminent violation. Renewal requests are to be made in writing no later than 20 days before the scheduled expiration date of a temporary denial order.

⁴ The October 3, 2022 renewal order was published in the **Federal Register** on October 7, 2022 (87 FR 60987).

B. The TDO and BIS’s Request for Renewal

The U.S. Commerce Department, through BIS, responded to the Russian Federation’s (“Russia’s”) further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia’s access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia’s defense, aerospace, and maritime sectors and are intended to cut off Russia’s access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia’s strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (e.g., Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (“ECCN”) 9A991 (section 746.8(a)(1) of the EAR).⁵ BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (“AVS”) (section 740.15 of the EAR).⁶ Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

This OEE request for renewal is based upon the facts underlying the issuance of the initial TDO and the renewal order subsequently issued in this matter on October 3, 2022, as well as other evidence developed during this investigation. These facts and evidence demonstrate that UTair continues to act in blatant disregard for U.S. export controls and the applicable TDO. Specifically, the initial TDO, issued on April 7, 2022, was based on evidence

⁵ 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (“CCL”) under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

⁶ 87 FR 13048 (Mar. 8, 2022).

¹ On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (“ECRA”). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. App. 2401 *et seq.* (“EAA”), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (“IEEPA”), and were in effect as of ECRA’s date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

that UTair engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991.b on flights into Russia after March 2, 2022 from destinations including, but not limited to, Jeddah, Saudi Arabia, Yerevan, Armenia, and Tashkent, Uzbekistan, without the required BIS authorization.⁷ Further evidence submitted by BIS indicated that UTair was continuing to operate aircraft subject to the EAR domestically on flights within Russia, potentially in violation of section 736.2(b)(10) of the Regulations.

As discussed in the October 3, 2022 renewal order, evidence presented by

BIS indicated that, after the initial order issued, UTair continued to operate aircraft subject to the EAR and classified under ECCN 9A991.b on flights both into and out of Russia, in violation of the Regulations and the TDO itself.⁸ Specifically, the October 3, 2022 renewal order detailed UTair's continued operation of aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Yerevan, Armenia, Baku, Azerbaijan, and Tashkent, Uzbekistan.⁹

Since that time, UTair has continued to engage in conduct prohibited by the applicable TDO and Regulations. In its March 7, 2023 request for renewal of the TDO, BIS submitted evidence that UTair

is operating aircraft subject to the EAR and classified under ECCN 9A991.b, both on flights into and within Russia, in violation of the October 3, 2022 TDO and/or the Regulations. Specifically, BIS's evidence and related investigation demonstrates that UTair has continued to operate aircraft subject to the EAR, including, but not limited to, on flights into and out of Russia from/to Fergana, Uzbekistan, Dushanbe, Tajikistan, Dubai, United Arab Emirates, and Baku, Azerbaijan. Information about those flights includes, but is not limited to, the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA-73089	37552	737-8GU (B738)	Fergana, UZ/Surgut, RU	March 13, 2023.
RA-73089	37552	737-8GU (B738)	Yerevan, AM/Moscow, RU	March 23, 2023.
RA-73089	37552	737-8GU (B738)	Dubai, AE/Grozny, RU	March 28, 2023.
RA-73082	30437	767-224 (ER) (B762)	Dushanbe, TJ/Moscow, RU	March 29, 2023.
RA-73086	32780	737-8AS (B738)	Dubai, AE/Grozny, RU	March 19, 2023.
RA-73086	32780	737-8AS (B738)	Yerevan, AM/Tyumen, RU	March 26, 2023.
RA-73086	32780	737-8AS (B738)	Baku, AZ/Moscow, RU	March 28, 2023.
RA-73047	28912	737-524 (B735)	Baku, AZ/Ufa, RU	February 28, 2023.
RA-73047	28912	737-524 (B735)	Baku, AZ/Ufa, RU	March 7, 2023.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that UTair has acted in violation of the Regulations and the TDO; that such violations have been significant and deliberate; and that given the foregoing and the nature of the matters under investigation, there is a likelihood of imminent violations. Therefore, renewal of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with UTair, in connection with export and reexport transactions involving items subject to the Regulations and in connection with any other activity subject to the Regulations.

IV. Order

It is therefore ordered:

First, UTair Aviation JSC, Khanty-Mansiysk Airport, Tyumen Region,

Russia 628012, when acting for or on their behalf, any successors or assigns, agents, or employees 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 EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), 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 EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of 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 EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

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

A. Export, reexport, or transfer (in-country) to or on behalf of UTair any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by UTair of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby UTair acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted

⁷ Publicly available flight tracking information shows that on March 5, 2022, serial number (SN) 36387 flew from Jeddah, Saudi Arabia to Grozny, Russia, and on March 30, 2022, SN 28907 flew from Yerevan, Armenia to Tyumen, Russia. In addition, on March 31, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia.

⁸ Engaging in conduct prohibited by a denial order violates the Regulations. 15 CFR 764.2(a) and (k).

⁹ Publicly available flight tracking information shows that on September 19, 2022, SN 30437 flew from Tashkent, Uzbekistan to Moscow, Russia, and

SN 30435 flew from Yerevan, Armenia to Moscow, Russia. In addition, on September 21, 2022, SN 28912 flew from Baku, Azerbaijan to Moscow, Russia.

acquisition from UTair of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from UTair in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by UTair, or service any item, of whatever origin, that is owned, possessed or controlled by UTair if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to UTair 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 accordance with the provisions of sections 766.24(e) of the EAR, UTair may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by UTair as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to UTair, and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,
Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023-06883 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Case No. 22-BIS-0007]

Order Relating to Kenneth Scott, Scott Communications, Inc., and Mission Communications, LLC; In the Matter of: Scott Communications, Inc., 61574 Hillside Road, St. Ignatius, MT 59865; Mission Communications, LLC, 61574 Hillside Road, St. Ignatius, MT 59865; Kenneth Peter Scott, 61574 Hillside Road, St. Ignatius, MT 59865; Respondents

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified Scott Communications, Inc. and Kenneth Scott (collectively "Scott"), as well as Mission Communications, LLC ("Mission") of St. Ignatius, Montana ("Respondents"), that it has initiated an administrative proceeding against them pursuant to section 766.3 of the Export Administration Regulations (the "Regulations"),¹ through the issuance of a Charging Letter alleging that Respondents committed five violations of the Regulations. Specifically:

General Allegations

1. In or about March 2017, a Federal Bureau of Investigations ("FBI") Special Agent working in an undercover capacity (the "UC") contacted Kenneth Scott via email. The UC used an email

¹ The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601-4623 (Supp. III 2015) ("the EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 comp. 783 (2002)), which has been extended by successive Presidential Notices, continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801-4852 ("ECRA"). While section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

address identified from a trade magazine advertisement in which Scott Communications advertised various communications equipment for sale. During the course of the sales negotiations with the UC, Scott was acting on behalf of Scott Communications, Inc. For example, the advertisement also included a telephone and fax number for "Ken Scott." A 2017 Better Business Bureau business profile further identified Kenneth Scott as the president of Scott Communications, Inc. In addition, in his email communications with the UC, as well in his social media profiles, Kenneth Scott identified himself as the President of Scott Communications.

2. On or about March 16, 2017, the UC sent Scott an email titled "Motorola Radio Quote Request." In the email, the UC requested a price quote for two Motorola XTS 2500, 800 or 900 Mhz radios. The UC also told Scott that, after the initial order of two radios, he intended to follow up with a larger order. The UC also asked Scott about shipping to Iran and later informed Scott that he intended to transship the radios from Jordan to Iran. Scott ultimately agreed to ship the radios to Jordan with knowledge that they would then be transshipped to Iran.

3. Specifically, on or about March 21, 2017, the UC emailed Scott asking him to: *Please provide me with your competitive shipping price to Jordan. My customer will test the units there. For the second order, it would be very valuable to me if you can ship directly to my customer in Iran. I want to continue business with you and this would be very helpful because as you know my customer cannot purchase directly from the United States. If you are able to get the units to Iran we will negotiate your fees in addition to the price for radios and your shipping rates. If you can only get the radios close, we can determine an appropriate fee.*

4. In response, Scott stated: *I have never shipped to IRAN, and the way the politics here are concerned, I would guess not. Where else could we ship them to, [p]rior to them going to IRAN. Do you have a broker here in the US?"*

5. The following day, the UC responded with: *Unfortunately, I do not have a US based broker. I understand that due to the sanctions the US has against Iran one cannot ship goods from the US directly to that country. If you can ship the radios to Jordan I can transship them to my customer in Iran. Please provide me with a quote for shipping the two radios to Jordan.*

6. The UC also discussed possible shipments to Singapore. Scott ultimately advised that shipping via

DHL to Jordan would cost \$250 and indicated that the price would remain the same if the UC preferred Singapore. On or about March 22, 2017, Scott emailed an invoice to the UC, listing two Motorola XTS 2500 radios valued at \$850 each, for a total product cost of \$1700, with shipping valued at \$250. On or about March 28, 2017, the UC advised Scott via email that he was ready to proceed with the order and reiterated again that the ultimate consignee was located in Iran.

7. On or about April 15, 2017, the UC reached out to Scott and informed him that, after speaking to his customer in Iran, the customer expected the radios to be loaded with 256-Bit AES Encryption. Scott indicated that he did not provide encryption but advised that the customer could program the radios himself if he had the software. The UC agreed to proceed with the sale but asked Scott about the availability of other models that could be loaded with 256-bit AES encryption and stated that encrypted radios were more difficult to procure. The UC then proceeded to share emails from his purported customer in Iran with Scott, again reiterating that the ultimate end-user was located in Iran. On or about April 17, 2017, Scott emailed the UC with suggestions on how to procure the necessary equipment to load the radios with 256-bit AES encryption.

8. Following additional emails in which the UC again advised Scott that the ultimate end-user was located in Iran and that the radios would be transshipped from Jordan to Iran, Scott proceeded with the sales transaction. On or about June 7, 2017, Scott provided the UC with the U.S. Postal Service ("USPS") tracking number for the shipment of the two radios, which were ultimately detained with the assistance of the USPS in St. Ignatius, Montana prior to export. Scott completed the United States Postal Form 2976-R and signed the customs declaration form, verifying that he had complied with all applicable export laws and regulations.

9. In December 2018, Special Agents from the FBI and BIS contacted Scott to conduct an interview and outreach. During the interview, Scott stated that he was familiar with BIS regulations and that he regularly checks the BIS website for updates. When asked about conducting business with sanctioned countries, Scott stated that he had never done business with North Korea, Cuba, Syria or Sudan. When asked specifically about Iran, he acknowledged that he had received an inquiry about a Motorola portable radio destined for a customer in Iran and that he completed the sale.

He indicated, however, that the export was made through an individual in Florida. At the conclusion of the interview, the BIS Special Agent explained the BIS voluntary self-disclosure program, provided Scott with additional information related to export controls, and served Scott with an administrative subpoena. Despite receiving this information, Scott never filed a voluntary self-disclosure related to the shipment of the two Motorola radios.

10. Later that same day, Scott forwarded the BIS Special Agent several emails related to his sales transaction with the UC. Scott failed to include any of the emails with the UC referencing Iran or discussing possible transshipment through Jordan or Singapore. He also claimed that he had "misspoke[n] about the route this package took" when he stated that the export mentioned during the interview had gone through Florida.

11. After the BIS Special Agent contacted Scott with additional questions, Scott responded: Call me on Monday so I can explain, I never sold anything to Iran. My customer had someone in Iran who wanted to buy these radios. I refused after he called me a [sic] tried to convince me to sell and ship to that location. I refused. I actually was thinking he was trying to set me up. Then he hounded me about Encryption, which I flat told him no way. . . .

12. In answering the BIS Special Agent's questions via email and responding to the BIS administrative subpoena, Scott made several false statements about the sales transaction with the UC. Notably, he falsely stated that he communicated with the UC by phone, denied having had additional email communications with the UC, and falsely stated that the UC told him that the radios' end-use was for oil exploration.

13. When the emails Scott provided to the BIS Special Agent were compared with emails obtained by the UC during the investigation, it appeared that Scott edited one of the emails to support his claim that he did not export anything to Iran. Specifically, in an April 15, 2017 email to the UC, which made no reference to Iran, Scott inserted the following sentence into the document he provided to the BIS Special Agent: "I won't sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me."

14. Scott also failed to comply with reporting requirements by failing to file an Electronic Export Information ("EEI") for the export of the two radios and failed to maintain appropriate

records. Specifically, the BIS Special Agent asked Scott to respond to OEE's subpoena requesting "[a]ny and all records, from 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities subject to the Export Administration Regulations. . . ." In response, Scott stated that he has never "kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago."

15. Since at least March 2018, Scott has also exported under the business name Mission Communications, LLC ("Mission"), which shares the same address as Scott Communications, Inc. Specifically, beginning in March 2018 and continuing until at least May 2019, Scott began exporting under an export identification number associated with Mission. In addition, at times material to the violations, including in his December 2018 communications with the BIS Special Agent, Scott identified himself via email as the president of Mission.

16. BIS incorporates and alleges paragraphs 1–15 of the General Allegations into the below:

Charge 1 CFR 764.2(e)—Acting With Knowledge of a Violation Related to the Sale of Two Digital Portable Radios

17. Beginning in or about March 2017 and continuing through on or about June 7, 2017, Scott sold, transferred, or conducted negotiations with respect to items subject to the EAR and the Iranian Transactions and Sanctions Regulations ("ITSR"),² specifically two Motorola Astro XTS 2500 Digital Portable Radios, a commodity classified as Export Control Classification Number (ECCN) 5A991.g. and controlled for Anti-Terrorism reasons, with knowledge that a violation of the Regulations had or was about or intended to occur in connection with the items. In particular, Scott sold, transferred, or conducted negotiations with respect to the items with knowledge that they were destined for Iran without the required U.S. Government authorization. At all times pertinent hereto, section 742.8 of the Regulations imposed a BIS license requirement for the export or reexport of the items to Iran. Additionally, section 746.7 of the Regulations prohibits the export or reexport to Iran of any item subject to both the Regulations and the ITSR, if the transaction is prohibited by the ITSR and has not been authorized by the Treasury Department's Office of

² 31 CFR part 560 (2017).

Foreign Assets Control (“OFAC”). At all times pertinent hereto, the ITSR prohibited, *inter alia*, the unauthorized export or reexport, either directly or indirectly, of the items to Iran. *See* 31 CFR 560.204–205.

18. Specifically, as set forth above, in or about March 2017, Scott began negotiating the sale of two Motorola Astro XTS 2500 Digital Portable Radios through emails with an undercover Special Agent, whose true identity was unknown to Scott. The UC requested that the radios be sent to Iran and later stated that they would be transshipped from Jordan to Iran. Although the UC reiterated on multiple occasions that the ultimate end-user was located in Iran, Scott agreed to complete the sales transaction. On or about June 7, 2017, Scott provided the undercover Special Agent with a USPS tracking number for the shipment of the two radios.

19. No U.S. Government authorization had been sought or obtained in connection with this transaction. In engaging in such conduct with knowledge that a violation of the EAR, or any order, license or authorization issued thereunder, has occurred, is about to occur, or is intended to occur, Scott violated section 764.2(e) of the Regulations.

Charges 2–3 15 CFR 764.2(g)—Misrepresenting and Concealing Facts to an Official of a United States Agency

20. On at least two occasions between December 2018 and January 2019, Scott and Mission made a false or misleading representation, statement, certification, or falsified or concealed a material fact, to a U.S. government official.

21. Following the above-described efforts by Scott to ship the two radios, FBI and BIS Special Agents interviewed Scott on or about December 5, 2018. During the interview with these U.S. government officials, Scott stated that he received an inquiry for a Motorola portable radio destined for a customer in Iran and that he had completed the sale. Thereafter, on or about December 7, 2018, in a follow-up email to the BIS Special Agent, Scott indicated that he had never shipped anything to Iran and that, when the buyer telephoned him to purchase for a customer in Iran, he refused.

22. On or about December 7, 2018, Scott made additional materially false statements or omissions to the BIS Special Agent about his communications related to the sale of the radios. Specifically, Scott falsely represented that he communicated with the UC by phone and that there were no email communications indicating that the radios were destined for Iran. He

also falsely stated that the UC advised him that the radios would be used for oil exploration.

23. Additionally, on or about December 11, 2018, Scott produced an email in response to the BIS subpoena that had been materially altered and falsified. Although the original April 15, 2017, email communication between Scott and the UC made no reference to Iran, the document provided by Scott to the Special Agent had been altered and falsified by inserting the following statement into the email: “I won’t sell to IRAN OR I WILL NOT SUPPLY ANY ENCRYPTION. I have explained this to you on the phone, why are you badgering me.” (Capitalization as shown in email).

24. By making a false or misleading representation, statement, or certification, or falsifying or concealing any material fact to BIS and/or FBI Special Agents in the course of an investigation or other action subject to the EAR, Scott and Mission violated section 764.2(g) of the Regulations on at least two occasions.

Charge 4 15 CFR 764.2(a)—Engaging in Prohibited Conduct Related to the Failure to File Electronic Export Information

25. On or about June 7, 2017, Scott engaged in conduct prohibited by the Regulations by failing to comply with reporting requirements, namely by failing to file Electronic Export Information (“EEI”) for the shipment of two Motorola Astro XTS 2500 Digital Portable Radios as described above. EEI includes export information about a transaction such as the names and addresses of the parties to a transaction; the ECCN (when required); the description, quantity and value of the items exported; and the license authority for the export.

26. Section 758.1(b) of the EAR required that EEI be filed in certain situations, including for all exports of items subject to the EAR that were destined for Iran, a Country Group E:1 destination,³ regardless of value, and “for all exports subject to the EAR that require submission of a license application, regardless of value or destination” Records checks reflect that Scott failed to file EEI related to the June 7, 2017 shipment of the two Motorola Astro XTS 2500 Digital Portable Radios.

27. By failing to file the EEI for the shipment of the two Motorola Astro XTS 2500 Digital Portable Radios as required pursuant to section 758.1(b), Scott committed one violation of section

764.2(a) of the Regulations, by engaging in any transaction or taking any other action prohibited by or contrary to, or refraining from engaging in any transaction or taking any other action required by ECRA, the EAR, or any order, license or authorization issued thereunder.

Charge 5 15 CFR 764.2(i)—Failure To Comply With Reporting, Recordkeeping Requirements

28. Between on or about March 16, 2017 and January 14, 2019, Scott and Mission failed to comply with the recordkeeping requirements set forth in Part 762 of the EAR. Scott and Mission at all relevant times were (and remain) subject to the jurisdiction of the United States and participated in transactions involving the export from the United States of items subject to the Regulations, including the transaction described in Charge 1, *supra*, and were required to keep and maintain all records described in section 762.2 of the Regulations made or obtained. *See* 15 CFR 762.1(a)(2), (a)(4), and (b).

29. The records required to be retained include, *inter alia*, bills of lading and other “export control documents” (as defined in part 772 of the Regulations), correspondence, and any other records Scott or Mission made or obtained pertaining to such transactions. *See* 15 CFR 762.2 and 772.1 (at definition of “export control document”). All such records must be retained for a period of five years from the date of the export of the item involved in the transaction. *See* 15 CFR 762.6(a). In addition, any such records formally or informally requested by BIS (or any other U.S. Government agency) may not be destroyed or disposed of without written authorization from BIS (or other agency concerned), even if such records have been retained for more than the required retention period. *See* 15 CFR 762.6(b).

30. Scott and Mission failed to maintain records as required pursuant to section 762 of the EAR. On or about December 5, 2018, the BIS Special Agent served Scott with a BIS administrative subpoena requesting “[a]ny and all records, from December 2013 to present, related to export/re-export, facilitation of an export/re-export, or attempted export/re-export of any and all commodities” subject to the EAR. The requested records included, but were not limited to, requests for quotes, waybills, bills of lading, Shipper’s Export Declarations, payment records, emails, and other correspondence.

31. On or about December 10, 2018, in responding to the BIS administrative

³ *See* Supplement No. 1 to 15 CFR part 740.

subpoena, Scott advised the BIS Special Agent that he has never “kept a record or a file on this stuff, as I had no idea I had to. . . . Some of my shipping records were on my old computer that was damaged by a lightning strike about 3 years ago.” On January 14, 2019, after the BIS Special Agent granted Scott additional time to respond to the subpoena, he provided some records, including a list of freight forwarders/brokers and invoices related to exports to approximately 15 countries. For almost all of these exports, however, he failed to produce any of the other requested records, including quotes, requests for quotes, waybills, bills of lading, payment records, or emails and other correspondence. Scott also acknowledged that the records were incomplete, claiming that “[w]e lost our main HD computer during a storm in April of 2015. A lot of information was lost.”

32. As a result of these failures, Scott and Mission committed a violation of section 764.2(i) of the Regulations, by failing or refusing to comply with any reporting or recordkeeping requirement of ECRA, the EAR, or of any order, license, or authorization issued thereunder.

Whereas, I have taken into consideration the Respondents’ limited ability to pay a monetary penalty;

Whereas, BIS and Respondents have entered into a Settlement Agreement pursuant to section 766.18(b) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

Whereas, Respondents admit committing the alleged conduct described in the Charging Letter; and

Whereas, I have approved of the terms of such Settlement Agreement; *it is therefore ordered*:

First, for a period of twenty (20) years from the date of the Order, Kenneth Scott, Scott Communications, Inc., and Mission Communications, LLC, with a last known address of 61574 Hillside Road, St. Ignatius, MT 59865, and when acting for or on their behalf, their successors, assigns, representatives, agents, or employees (hereinafter collectively referred to as 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 to or to be exported from the United States that is subject to the Regulations, or in any other activity 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 or reexport 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, any licenses issued under the Regulations in which Respondents have an interest as of the date of this Order shall be revoked by BIS.

Fourth, after notice and opportunity for comment as provided in section

766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fifth, the Settlement Agreement and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2023-06920 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of 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.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

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 period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO 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. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

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:

In general, Commerce finds that determinations concerning whether particular companies should be “collapsed” (*i.e.*, 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 a 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 antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any

company subject to a 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 a Quantity and Value 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 a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests 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 particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.¹ 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 Section D responses.

Opportunity to Request a Review: Not later than the last day of April 2023,² interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

Antidumping Duty Proceedings

Argentina: Biodiesel, A-357-820	4/1/22-3/31/23
Bahrain: Common Alloy Aluminum Sheet, A-525-001	4/1/22-3/31/23
Bosnia and Herzegovina: Silicon Metal, A-893-001	4/1/22-3/31/23
Brazil: Common Alloy Aluminum Sheet, A-351-854	4/1/22-3/31/23
Croatia: Common Alloy Aluminum Sheet, A-891-001	4/1/22-3/31/23
Czech Republic: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe, A-851-804	4/1/22-3/31/23
Egypt: Common Alloy Aluminum Sheet, A-729-803	4/1/22-3/31/23
Germany: Common Alloy Aluminum Sheet, A-428-849	4/1/22-3/31/23
Iceland: Silicon Metal, A-400-001	4/1/22-3/31/23
India: Carbon and Alloy Steel Threaded Rod, A-533-887	4/1/22-3/31/23
India: Common Alloy Aluminum Sheet, A-533-895	4/1/22-3/31/23
Indonesia: Biodiesel, A-560-830	4/1/22-3/31/23
Indonesia: Common Alloy Aluminum Sheet, A-560-835	4/1/22-3/31/23
Italy: Common Alloy Aluminum Sheet, A-475-842	4/1/22-3/31/23
Oman: Common Alloy Aluminum Sheet, A-523-814	4/1/22-3/31/23
Romania: Common Alloy Aluminum Sheet, A-485-809	4/1/22-3/31/23
Republic Of Korea: Phosphor Copper, A-580-885	4/1/22-3/31/23

¹ See Trade Preferences Extension Act of 2015, Public Law 114-27, 129 Stat. 362 (2015).

² Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

Serbia: Common Alloy Aluminum Sheet, A-801-001	4/1/22-3/31/23
Slovenia: Common Alloy Aluminum Sheet, A-856-001	4/1/22-3/31/23
South Africa: Common Alloy Aluminum Sheet, A-791-825	4/1/22-3/31/23
Spain: Common Alloy Aluminum Sheet, A-469-820	4/1/22-3/31/23
Taiwan: Common Alloy Aluminum Sheet, A-583-867	4/1/22-3/31/23
Thailand: Rubber Bands, A-549-835	4/1/22-3/31/23
The People's Republic of China: 1,1,1,2-Tetrafluoroethane (R-134A), A-570-044	4/1/22-3/31/23
The People's Republic of China: Activated Carbon, A-570-904	4/1/22-3/31/23
The People's Republic of China: Aluminum Foil, A-570-053	4/1/22-3/31/23
The People's Republic of China: Alloy and Certain Carbon Steel Threaded Rod, A-570-104	4/1/22-3/31/23
The People's Republic of China: Drawn Stainless Steel Sinks, A-570-983	4/1/22-3/31/23
The People's Republic of China: Magnesium Metal, A-570-896	4/1/22-3/31/23
The People's Republic of China: Mobile Access Equipment and Subassemblies Thereof, A-570-139	9/30/21-3/31/23
The People's Republic of China: Non-Malleable Cast Iron Pipe Fittings, A-570-875	4/1/22-3/31/23
The People's Republic of China: Stainless Steel Sheet and Strip, A-570-042	4/1/22-3/31/23
The People's Republic of China: Steel Threaded Rod, A-570-932	4/1/22-3/31/23
The People's Republic of China: Twist Ties, A-570-131	4/1/22-3/31/23
The People's Republic of China: Wooden Cabinets and Vanities and Components, Thereof A-570-106	4/1/22-3/31/23
Turkey: Common Alloy Aluminum Sheet, A-489-839	4/1/22-3/31/23

Countervailing Duty Proceedings

Bahrain: Common Alloy Aluminum Sheet, C-525-002	1/1/22-12/31/22
India: Carbon and Alloy Steel Threaded Rod, C-533-888	1/1/22-12/31/22
India: Common Alloy Aluminum Sheet, C-533-896	1/1/22-12/31/22
Mexico: Standard Steel Welded Wire Mesh, C-201-854	1/1/22-12/31/22
Morocco: Phosphate Fertilizers, C-714-001	1/1/22-12/31/22
Republic of Kazakhstan: Silicon Metal, C-834-811	1/1/22-12/31/22
Russia: Phosphate Fertilizers, C-821-825	1/1/22-12/31/22
The People's Republic of China: Aluminum Foil, C-570-054	1/1/22-12/31/22
The People's Republic of China: Carbon and Alloy Steel Threaded Rod, C-570-105	1/1/22-12/31/22
The People's Republic of China: Drawn Stainless Steel Sinks, C-570-984	1/1/22-12/31/22
The People's Republic of China: Stainless Steel Sheet and Strip, C-570-043	1/1/22-12/31/22
The People's Republic of China: Twist Ties, C-570-132	1/1/22-12/31/22
The People's Republic of China: Wooden Cabinets and Vanities and Components, Thereof C-570-107	1/1/22-12/31/22
Turkey: Common Alloy Aluminum Sheet, C-489-840	1/1/22-12/31/22

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's

location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.³

³ See the Enforcement and Compliance website at <https://www.trade.gov/us-antidumping-and-countervailing-duties>.

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.⁴ Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.⁵ In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to

⁴ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

⁵ In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <https://access.trade.gov>.⁶ Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.⁷

Commerce will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2023. If Commerce does not receive, by the last day of April 2023, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

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 provisional-measures "gap" period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled "*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*" in the **Federal Register**.⁸ On September 27, 2021, Commerce also published the notice entitled "*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*" in the **Federal Register**.⁹ 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.¹⁰

In accordance with the *Procedural Guidance*, for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called "AISL-Annual Inquiry Service List."¹¹

As mentioned in the *Procedural Guidance*, beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis

⁸ See *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300 (September 20, 2021) (*Final Rule*).

⁹ See *Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*, 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

¹⁰ *Id.*

¹¹ This segment has been 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.

when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.¹² Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from "Active" to "Needs Amendment" for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule*,¹³ once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

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>.

¹² See *Procedural Guidance*, 86 FR at 53206.

¹³ See *Final Rule*, 86 FR at 52335.

⁶ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

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

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.”¹⁴

Accordingly, as stated above and 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.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 24, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–06904 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: Final Results of Antidumping Duty Administrative Review; 2020–2021; Correction

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

ACTION: Notice; correction.

SUMMARY: On March 14, 2023, the U.S. Department of Commerce (Commerce) published the **Federal Register** notice of the final results of the administrative review of the antidumping duty order on finished carbon steel flanges from India covering the period August 1, 2020, through July 31, 2021. That notice incorrectly identified the name of one company in the final results of the review rate table.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482–2924 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 14, 2023, in FR Doc. 2023–05149, on page 15669, in the Producer/exporter and weighted-average dumping margin (percent) table, make the following correction:

- In the second row of the “Producer/Exporter” column in the chart, revise the second-listed company name, “USK Export Private Limited” to “USK Exports Private Limited.”

Background

On March 14, 2023, Commerce published in the **Federal Register** the final results of the administrative review of the antidumping duty order on finished carbon steel flanges from India covering the period August 1, 2020, through July 31, 2021.¹ In the weighted-average dumping margin table, Commerce inadvertently misidentified USK Exports Private Limited as USK Export Private Limited (*i.e.*, it used the singular form “Export,” rather than the plural form “Exports”). This same mistake appeared in its *Preliminary Results*.² The corrected Producer/exporter and weighted-average dumping margin (percent) table is as follows:

Producer/exporter	Weighted-average dumping margin (percent)
R.N. Gupta & Co. Ltd	0.73
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal	1.00
Non-Selected Companies	0.84

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i)(1) of the Tariff Act of 1930 as amended, and 19 CFR 351.221(b)(5).

Dated: March 27, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023–06703 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–DS–P

¹ See *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2020–2021*, 88 FR 15668 (March 14, 2023).

² See *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021*, 87 FR 54957 (September 8, 2022) (*Preliminary Results*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–820, A–560–830]

Biodiesel From Argentina and Indonesia: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on biodiesel from Argentina and Indonesia 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 April 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Jacqueline Arrowsmith, 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) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2022, Commerce published the notice of initiation of the sunset review of the AD orders on biodiesel from Argentina and Indonesia,¹ pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On December 16, 2022, Commerce received a notice of intent to participate from the domestic interested party³ for both of the *Orders* in accordance with 19 CFR 351.218(d)(1)(i).⁴ The domestic

¹ See *Biodiesel from Argentina and Indonesia: Antidumping Duty Orders*, 83 FR 18278 (April 26, 2018) (*Orders*).

² See *Initiation of Five-Year (Sunset) Review*, 87 FR 73757 (December 1, 2022).

³ The domestic interested party is the Clean Fuels Alliance Fair Trade Coalition (the Coalition). The Coalition consists of the following members: Ag Processing Inc. a Cooperative; Archer Daniels Midland Company; Clean Fuels Alliance Fair Trade Coalition; Cape Cod Biofuels; Clean Fuels Alliance America; Crimson Renewable Energy LP; Iowa Renewable Energy; LLC, Kolmar Americas, Inc.; Lake Erie Biofuels dba HERO BX, Minnesota Soybean Processors, Renewable Biofuels, LLC; Renewable Energy Group, Inc.; Seaboard Energy, Inc.; Thumb BioEnergy LLC; Western Dubuque Biodiesel, LLC; Western Iowa Energy, LLC; and World Energy, LLC.

⁴ See Domestic Interested Party’s Letters, “Five-Year (“Sunset”) Review of Antidumping and Countervailing Duty Orders on Biodiesel from Argentina: Notice of Intent to Participate,” dated December 16, 2022; and “Five-Year (“Sunset”)

¹⁴ *Id.*

interested party claimed domestic interested party status under section 771(9)(F) of the Act, as an association a majority of whose members are manufacturers of domestic like product in the United States.⁵ On January 3, 2023, the domestic interested party submitted a timely substantive response for both sunset reviews within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁶ Commerce did not receive a substantive response from any other interested parties with respect to the *Orders* covered by these sunset reviews. On January 25, 2023, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties in either of these sunset reviews.⁷ 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 expedited (120-day) sunset reviews of these *Orders*.

Scope of the Orders

The product covered by these *Orders* is biodiesel, which is a fuel comprised of monoalkyl esters of long chain fatty acids derived from vegetable oils or animal fats, including biologically-based waste oils or greases, and other biologically-based oil or fat sources. These *Orders* cover biodiesel in pure form (B100) as well as fuel mixtures containing at least 99 percent biodiesel by volume (B99). For fuel mixtures containing less than 99 percent biodiesel by volume, only the biodiesel component of the mixture is covered by the scope of these *Orders*. Biodiesel is generally produced to American Society for Testing and Materials International (ASTM) D6751 specifications, but it can also be made to other specifications. Biodiesel commonly has one of the following Chemical Abstracts Service (CAS) numbers, generally depending upon the feedstock used: 67784–80–9 (soybean oil methyl esters); 91051–34–2 (palm oil methyl esters); 91051–32–0 (palm kernel oil methyl esters); 73891–99–3 (rapeseed oil methyl esters); 61788–61–2 (tallow methyl esters); 68990–52–3 (vegetable oil methyl

esters); 129828–16–6 (canola oil methyl esters); 67762–26–9 (unsaturated alkylcarboxylic acid methyl ester); or 68937–84–8 (fatty acids, C12–C18, methyl ester). The B100 product subject to the *Orders* is currently classifiable under subheading 3826.00.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), while the B99 product is currently classifiable under HTSUS subheading 3826.00.3000. Although the HTSUS subheadings, ASTM specifications, and CAS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in these sunset reviews are addressed in the Issues and Decision Memorandum, including the likelihood of continuation or recurrence of dumping and the magnitude of the margins of dumping likely to prevail if these *Orders* were revoked. A list of topics discussed in the Issues and Decision Memorandum is included 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>. In addition, 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 Sunset Reviews

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Orders* would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail would be weighted-average margins of up to 86.23 percent for Argentina and up to 276.65 percent for Indonesia.

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 notification of the destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: March 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Orders*
- IV. History of the *Orders*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2023–06923 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–119]

Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2020–2022

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

SUMMARY: The Department of Commerce (Commerce) continues to find that Honda Power Products (China) Co., Ltd. (Honda), the sole company subject to the administrative review of the antidumping duty order on certain large vertical shaft engines between 225cc and 999cc, and parts thereof (large VSE) from the People's Republic of China (China) covering the period of review (POR) August 19, 2020, through February 28, 2022, is not eligible for a separate rate and, thus, is part of the China-wide entity.

DATES: Applicable April 4, 2023.

FOR FURTHER INFORMATION CONTACT: 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) 482–0981.

Review of Antidumping and Countervailing Duty Orders on Biodiesel from Indonesia: Notice of Intent to Participate,” dated December 16, 2022.

⁵ *Id.*

⁶ See Domestic Interested Party's Letters, “Substantive Response of Domestic Producers to Notice of Initiation,” dated January 3, 2023 (Substantive Response Argentina); and “Substantive Response of Domestic Producers to Notice of Initiation,” dated January 3, 2023 (Substantive Response Indonesia).

⁷ See Commerce's Letter, “Sunset Reviews Initiated on December 2, 2022,” dated January 25, 2023.

SUPPLEMENTARY INFORMATION:**Background**

On December 13, 2022, Commerce published the preliminary results for this administrative review.¹ We invited interested parties to comment on the *Preliminary Results*. No interested parties submitted comments. Accordingly, Commerce has made no changes to the *Preliminary Results*. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order²

The scope of the *Order* consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, primarily for riding lawn mowers and zero-turn radius lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment such as, including but not limited to, tow-behind brush mowers, grinders, and vertical shaft generators. The subject engines are spark ignition, single or multiple cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 225 cubic centimeters (cc) and a maximum displacement of 999cc. Typically, engines with displacements of this size generate gross power of between 6.7 kilowatts (kw) to 42 kw.

Engines covered by this scope normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small nonroad spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of the *Order*. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of the *Order*.

¹ See *Certain Large Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Preliminary Results and Rescission, in Part, of the Antidumping Duty Administrative Review; 2020–202287 FR 76178* (December 13, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order*, 86 FR 12623 (March 4, 2021) (*Order*).

For purposes of the *Order*, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as an oil pan, manifold, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of this order. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (e.g., ignition modules, ignition coils) for synchronizing with the motor to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

The engines subject to the *Order* are typically classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 8407.90.1020, 8407.90.1060, and 8407.90.1080. The engine subassemblies that are subject to the *Order* enter under HTSUS subheading 8409.91.9990. Engines subject to the *Order* may also enter under HTSUS subheadings 8407.90.9060 and 8407.90.9080. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise subject to the *Order* is dispositive.

Final Results of Administrative Review

We received no comments on, and made no changes to, the *Preliminary Results*. We continue to find that the sole mandatory respondent, Honda, is not eligible for a separate rate, and, thus, is part of the China-wide entity. In this administrative review, no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the China-wide entity. Because no review of the China-wide entity is being conducted, the China-wide entity rate is not subject to change as a result of this review. The rate previously established for the China-wide entity is 456.10 percent.³

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in

³ See *Order*, 86 FR at 12624.

accordance with the final results of this review. We intend to instruct CBP to apply an *ad valorem* assessment rate of 456.10 percent (*i.e.*, the China-wide entity rate), to all entries of subject merchandise during the POR which were exported by Honda. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) for Honda, that has not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; (2) for previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found eligible for a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

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

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 351.221(b)(5).

Dated: March 28, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-06974 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-970]

Multilayered Wood Flooring From the People's Republic of China: Final Results of Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on Multilayered Wood Flooring (MLWF) from the People's Republic of China (China) would be likely to lead to a continuation or recurrence of dumping, at the levels indicated in the "Final Results of Sunset Review" section of this notice.

DATES: Applicable April 4, 2023.

FOR FURTHER INFORMATION CONTACT: Max Goldman, 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) 482-0224.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2011, Commerce published the antidumping duty order on MLWF from China.¹ On December 1,

2022, Commerce published the initiation of the second sunset review of the *Order* on MLWF from China, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On December 13, 2022, Commerce received a timely and complete notice of intent to participate in this sunset review from the American Manufacturers of Multilayered Wood Flooring (AMMWF), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ AMMWF claimed interested party status within the meaning of section 771(9)(F) of the Act as an association of producers of the domestic like product in the United States.⁴

On January 3, 2023, AMMWF filed a timely and adequate substantive response, within the deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from any respondent interested party. 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 the *Order*.

Scope of the Order⁶

The product covered by the *Order* is MLWF from China. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁷

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *Order* and the magnitude of the margin likely to prevail if the *Order* was to be revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an

Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 76 FR 76690 (December 8, 2011); see also *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012), wherein the scope of the *Order* was modified (collectively, *Order*).

² See *Initiation of Five-Year ("Sunset") Reviews*, 87 FR 73757 (December 1, 2022).

³ See Domestic Interested Party's Letter, "Notice of Intent to Participate in Sunset Review," dated December 13, 2022.

⁴ *Id.*

⁵ See Domestic Interested Party's Letter, "Substantive Response to Notice of Initiation of Sunset Review," dated January 3, 2023.

⁶ See *Order*.

⁷ See Memorandum, "Issue and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Order on Multilayered Wood Flooring from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

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>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1), 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* on MLWF from China would be likely to lead to continuation or recurrence of dumping, and that the magnitude of the dumping margin likely to prevail would be a weighted-average margin up to 25.62 percent.

Notification Regarding Administrative Protective Order

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

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218 and 19 CFR 351.221(c)(5)(ii).

Dated: March 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

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

¹ See *Multilayered Wood Flooring from the People's Republic of China: Amended Final*

VIII. Recommendation

[FR Doc. 2023–06973 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for May 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in May 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Silicon from China A–570–806 (5th Review).	Thomas Martin, (202) 482–3936.
Stainless Steel Flanges from China A–570–064 (1st Review).	Thomas Martin, (202) 482–3936.
Stainless Steel Flanges from India A–533–877 (1st Review).	Thomas Martin, (202) 482–3936.
Countervailing Duty Proceedings	
Stainless Steel Flanges from China C–570–065 (1st Review).	Thomas Martin, (202) 482–3936.
Stainless Steel Flanges from India C–533–878 (1st Review).	Thomas Martin, (202) 482–3936.
Suspended Investigations	
No Sunset Review of suspended investigations is scheduled for initiation in May 2023.	

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.¹

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 9, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–06903 Filed 4–3–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–602, A–428–602, A–475–601, A–588–704]

Brass Sheet and Strip From France, Germany, Italy, and Japan: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on brass sheet and strip from France, Germany, Italy, and Japan would likely lead to a continuation or

recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders.

DATES: Applicable April 4, 2023.

FOR FURTHER INFORMATION CONTACT:

Whitley Herndon, 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) 482–6274.

SUPPLEMENTARY INFORMATION:**Background**

On January 9, 1987, Commerce published the AD orders on brass sheet and strip from France, Germany, Italy, and Japan.¹ On September 1, 2022, the ITC instituted,² and Commerce initiated,³ the fifth sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that a revocation of the *Orders* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.⁴

On March 29, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

¹ See *Antidumping Duty Order; Brass Sheet and Strip from France*, 52 FR 6995 (March 6, 1987); *Antidumping Duty Order; Brass Sheet and Strip from the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), amended in *Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip from the Federal Republic of Germany*, 52 FR 35750 (September 23, 1987); *Antidumping Duty Order; Brass Sheet and Strip from Italy*, 52 FR 6997 (March 6, 1987), amended in *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order in Accordance with Decision Upon Remand: Brass Sheet and Strip from Italy*, 56 FR 23272 (May 21, 1991); and *Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip from Japan*, 53 FR 30454 (August 12, 1988) (collectively, *Orders*).

² See *Brass Sheet and Strip from France, Germany, Italy, and Japan; Institution of Five-Year Reviews*, 87 FR 53785 (September 1, 2022).

³ See *Initiation of Five-Year (Sunset) Review*, 87 FR 53727 (September 1, 2022).

⁴ See *Brass Sheet and Strip from France, Germany, Italy, and Japan: Final Results of the Expedited Fifth Sunset Review of the Antidumping Duty Orders*, 88 FR 56 (January 3, 2023).

⁵ See *Brass Sheet and Strip from France, Germany, Italy, and Japan*, 88 FR 18586 (March 29, 2023).

¹ See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Scope of the Orders

The product covered by the *Orders* is brass sheet and strip, other than leaded and tinned brass sheet and strip, from France, Germany, Italy, and Japan. The chemical composition of the covered product is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000.

The *Orders* do not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the product covered by the *Orders* has a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included.

The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00.

Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the *Orders* remains dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping, as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protective order 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 is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 29, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-06922 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Form NIST-366A: Request for Personal Radiation Monitoring Services

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 5, 2023.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST by email to PRAComments@doc.gov. Please reference OMB Control Number 0693-0086 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

specific questions related to collection activities should be directed to Manuel Mejias, Radiation Safety Officer (also Chief of the Radiation Safety Division), NIST, 100 Bureau Dr, Gaithersburg, MD 20899-1731. 301-975-5022, manny.mejias@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is to seek clearance for the collection of routine information requested of individuals (including but not limited to Federal employees, visitors, contractors, associates) who work with or around sources of ionizing radiation on the NIST campus.

The information is collected for the following purposes:

(1) NIST is required by 10 CFR 20.1502 to monitor individuals who may be exposed to ionizing radiation above specific levels. This form will be used to collect information associated with this monitoring and to determine the type of monitoring required.

(2) NIST is required by 10 CFR 20.2106 to maintain records of radiation exposure monitoring. This form will be used to ensure the exposure information collected is properly associated with the individual using unique identifiers. In addition, NIST must provide reports to the monitored individuals when requested and to the NRC annually. This form will be used to ensure the correct information is provided to the individual.

II. Method of Collection

The information will be collected in paper format and electronically as a pdf form.

III. Data

OMB Control Number: 0693-0086.

Form Number(s): NIST-366A.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals.

Estimated Number of Respondents: 600.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 150 hours.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Mandatory.

Legal Authority: 10 CFR 20.1502 and 10 CFR 20.2106.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department,

including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023-06944 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service (NTIS) Advisory Board (the Advisory Board).

DATES: The Advisory Board will meet on Monday, May 22, 2023 from 8:30 a.m. to approximately 2:00 p.m., Eastern Time.

ADDRESSES: The Advisory Board meeting will be onsite at 5301 Shawnee Road, Alexandria, VA. Please note attendance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Shaw, (703) 605-6136, eshaw@ntis.gov or Steven Holland at sholland@ntis.gov.

SUPPLEMENTARY INFORMATION: The Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The Advisory Board reviews and makes recommendations to improve NTIS programs, operations, and general policies in support of NTIS' mission to advance Federal data priorities, promote economic growth, and enable operational excellence by providing innovative data services to Federal agencies through joint venture partnerships with the private sector.

The meeting will focus on a review of the progress NTIS has made in implementing its data mission and strategic direction. A final agenda and summary of the proceedings will be posted on the NTIS website as soon as they are available. (<https://www.ntis.gov/about/advisorybd/index.xhtml>).

Members of the public interested in attending or speaking are requested to contact Ms. Shaw at the contact information listed in the **FOR FURTHER INFORMATION CONTACT** section above not later than Monday, May 15, 2023. If there are sufficient expressions of interest, up to one-half hour will be reserved for public oral comments during the session. Speakers will be selected on a first-come, first-served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend are invited to submit written statements by emailing Ms. Shaw or Mr. Holland at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2023-06876 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-04-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC884]

South Atlantic 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 South Atlantic Fishery Management Council's (Council) will hold a meeting of the Snapper Grouper Advisory Panel (AP) April 25-27, 2023 and a public scoping session on April 26, 2023, in North Charleston, SC.

DATES: The Snapper Grouper AP will meet from 1 p.m. until 5 p.m. on April 25, 2023, from 8:30 a.m. until 5 p.m. on April 26, 2023 and 8:30 a.m. until 12 p.m. on April 27, 2023. A public scoping session will be held, beginning at 6 p.m. on April 26, 2023.

ADDRESSES: *Meeting address:* Hilton Garden Inn Charleston Airport; 5265 International Blvd., North Charleston, SC 29418; phone: (843) 308-9330.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Meeting information, including the agenda, overview, briefing book materials, and an online public comment form will be posted on the Council's website at: <https://safmc.net/advisory-council-meetings/> two weeks prior to the meeting. The meeting is open to the public and available via webinar as it occurs. The webinar registration link will be available from the Council's website. Public comment will also be taken during the meeting.

The agenda for the Snapper Grouper AP includes: updating the red grouper fishery performance report; updates and discussions of issues pertaining to Amendment 46 to the Snapper Grouper Fishery Management Plan (Recreational Permitting), Snapper Grouper Amendment 48 (Wreckfish), and Snapper Grouper Amendment 44 (Yellowtail Snapper); providing input for a Management Strategy Evaluation (MSE) for the snapper grouper fishery; discussing management implications of the most recent stock assessment of scamp and yellowmouth grouper; discussing impacts of Kennedy Space Center operations on fishing activities; and reviewing the Council's research priorities.

AP members will also receive updates on additional ongoing amendments to the Snapper Grouper Fishery Management Plan and other Council programs and initiatives. The AP will provide input and recommendations on agenda items for the Council's consideration and address other items as needed.

The Council will also hold a public scoping session at 6 p.m. on Wednesday, April 26, to gather public input on management priorities and objectives that will guide the Snapper Grouper MSE.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 30, 2023.

Key Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023-06975 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC802]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Whittier Head of the Bay Cruise Ship Dock Project in Whittier, Alaska

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Turnagain Marine Construction (TMC) to incidentally harass marine mammals during construction associated with the Whittier Head of the Bay cruise ship dock project in Whittier, Alaska.

DATES: This authorization is effective from April 1, 2023, through March 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Jenna Harlacher, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-turnagain-marine-constructions-cruise-dock-construction>. In case of problems

accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On September 16, 2022, NMFS received a request from TMC for an IHA to take marine mammals incidental to the construction of the cruise ship dock in Whittier, Alaska. Following NMFS’ review of the application, TMC provided further information on October 26, 2022, a revised application on January 9, 2023, and the application was deemed adequate and complete on January 10, 2023. Subsequently, TMC submitted an additional update to its application on February 3, 2023. The proposed IHA published for public comment on February 13, 2023 (88 FR 9227). TMC’s request is for take of five species of marine mammals by Level B harassment and, for a subset of two species, Level A harassment. Neither TMC, nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Activity

TMC plans to construct the Whittier Head of the Bay cruise ship dock project in the Passage Canal in Whittier, Alaska. The planned project will cover a 12-month window during which approximately 129 days of pile-installation and -removal activity will occur. This project involves installation and removal of seventy-two 36-inch (in) (0.91-meter (m)) temporary steel pile guides and installation of thirty-six 36-in (0.91-m), sixteen 42-in (1.1-m), and twenty 48-in (1.2-m) permanent steel piles. Three different installation methods will be used including vibratory installation of piles into dense material, impact pile driving to drive piling to tip elevation, and the Down-the-Hole (DTH) hammer to drill pile into the bedrock. TMC will deploy a bubble curtain to the 60-foot (ft) (18.3-m) isobath. This will be used during all activities that fall below the 60-ft (18.3-m) isobath. Sounds resulting from pile installation, removal, and drilling may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment.

A further detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (88 FR 9777, February 13, 2023). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS’ proposal to issue an IHA to TMC was published in the **Federal Register** on February 13, 2023 (88 FR 9777). That notice described, in detail, TMC’s activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, no public comments were received.

Changes From the Proposed IHA to Final IHA

Changes were made between publication of the notice of proposed IHA and this notice of final IHA. Changes have been made to correct typographical errors to Tables 4, 5, and 8 in the proposed **Federal Register** notice; however, the proposed IHA at the time of publishing was correct. Additionally, text regarding a 35-m

(114.83-ft) minimum shutdown zone was removed and replaced with the applicant's specified minimum shutdown zones that reflects the zones included in Table 8. Lastly, reasoning for the killer whale take calculation and shutdown zones for impact pile driving was included to correctly reflect what was included in the proposed notice.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; www.fisheries.noaa.gov/

national/marine-mammal-protection/marine-mammal-stock-assessments) and more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 1 lists all species or stocks for which take is expected and authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from

anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. 2021 SARs (e.g., Muto *et al.*, 2021) and the draft 2022 SARs (e.g., Young *et al.*, 2022). All values presented in Table 1 are the most recent available at the time of publication and are available online at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	PBR	Annual M/SI ³
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback whale	<i>Megaptera novaeangliae</i>	Central North Pacific Stock	-,-,Y	10,103 (0.3, 7,890, 2006)	83	26
		Western North Pacific	E,D,Y	1,107 (0.3, 865, 2006)	3	2.8
		California/Oregon/Washington ..	T,D,Y	4,973 (0.05, 4,776, 2018)	28.7	48.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	<i>Orca orcinus</i>	Alaska Resident	-,-,N	1,920 (N/A, 1,920, 2019)	19	1.3
		Gulf of Alaska/Aleutian Islands/ Bering Sea Transient.	-,-,N	587 (N/A, 587, 2012)	5.9	0.8
		AT1 Transient	-,-,Y	7 (N/A, 7, 2019)	0.01	1
Family Phocoenidae (porpoises):						
Dall's porpoise ⁴	<i>Phocoenoides dalli</i>	Alaska Stock	-,-,N	15,432 (0.097, 13, 110, 2021).	131	37
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller sea lion	<i>Eumetopias jubatus</i>	Western Stock	E,D,Y	52,932 (N/A, 52,932, 2019).	318	254
Family Phocidae (earless seals):						
Harbor seal	<i>Phoca vitulina richardii</i>	Clarence Strait Stock	-,-,N	27,659 (N/A, 24,854, 2015).	746	40

¹ Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal stock assessment reports online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

³ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

⁴ Previous abundance estimates covering the entire stock's range are no longer considered reliable and the current estimates presented in the SARs and reported here only cover a portion of the stock's range. Therefore, the calculated N_{min} and PBR is based on the 2015 survey of only a small portion of the stock's range. PBR is considered to be biased low since it is based on the whole stock whereas the estimate of mortality and serious injury is for the entire stock's range.

On January 24, 2023, NMFS published the draft 2022 SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>). The Alaska and Pacific Ocean SARs include a proposed update to the humpback whale stock structure. The new structure, if finalized, would modify the MMPA-designated stocks to align more closely with the ESA-designated Distinct Population Segments (DPS). Please refer to the draft 2022 Alaska and Pacific Ocean SARs for additional information.

NMFS Office of Protected Resources, Permits and Conservation Division has generally considered peer-reviewed data in draft SARs (relative to data provided in the most recent final SARs), when available, as the best available science, and has done so here for all species and stocks, with the exception of a new proposal to revise humpback whale stock structure. Given that the proposed changes to the humpback whale stock structure involve application of NMFS' Guidance for Assessing Marine Mammals Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis in this authorization based on the status quo stock structure identified in the most recent final SARs (2021; Muto *et al.*, 2022).

As indicated above, all five species (with eight managed stocks) in Table 1

temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it. All species that could potentially occur in the planned project areas are included in Table 1 of the IHA application. While some species have been reported in or near the area, it is very rare, and the temporal and/or spatial occurrence of these species is more likely outside of the Passage Canal and outside of the harassment zones. Therefore, given this information take is not expected to occur and they are not discussed further beyond the explanation provided here.

A detailed description of the species likely to be affected by TMC's construction project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (88 FR 9777, February 13, 2023); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to the NMFS website (<https://www.fisheries.noaa.gov/find-species>) for generalized species accounts.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals

underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS
[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on -65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges,

please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the TMC's pile driving activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of the proposed IHA (88 FR 9777, February 13, 2023) included a

discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from the TMC's pile driving activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of the proposed IHA (88 FR 9777, February 13, 2023).

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of "small numbers," and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes will primarily be by Level B harassment, as use of the acoustic sources (*i.e.*, vibratory or impact pile driving and DTH) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for Dall's porpoise and harbor seals, due to the cryptic nature of these species in the context of large predicted auditory injury zones. Auditory injury is unlikely to occur for low- and mid-frequency species and otariids, based on the likelihood of the species in the action area, the ability to monitor the entire smaller shutdown zone, and because of the expected ease of detection for the former groups. The mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed

or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur Permanent Threshold Shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.*, bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.*, Southall *et al.*, 2007, 2021, Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment

when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by Temporary Threshold Shift (TTS) as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

TMC's activity includes the use of continuous (vibratory hammer and DTH) and impulsive (DTH and impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μ Pa (rms) thresholds are applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). TMC's activity includes the use of impulsive (impact pile-driving and DTH) and non-impulsive (vibratory hammer and DTH) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	Cell 4: $L_{E,MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	Cell 6: $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	Cell 8: $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	Cell 10: $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and cumulative sound exposure level (L_E) has a reference value of 1 μ Pa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript “flat” is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the

planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.*, impact pile driving, vibratory pile driving and removal, and DTH).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data

from other locations to develop source levels for the various pile types, sizes, and methods (Table 4). Additionally, a bubble curtain will be deployed at a depth of 60-ft (18.3-m) and will be used during all activities that fall within the 60-ft (18.3-m) isobath. Therefore, a 5 dB reduction is applied to the estimated sound source levels for driving these piles only (Caltrans, 2020).

TABLE 4—OBSERVED SOURCE LEVELS FOR PILE INSTALLATION AND REMOVAL

Pile size, method	SPL (dB)	SEL (dB)	Reference
Bubble Curtain in use (depths of 60 ft or less)			
36-in steel pile, Vibratory Installation (temporary).	161 RMS **		U.S. Navy 2015.
36-in steel pile, Vibratory Removal (temporary).	161 RMS **		U.S. Navy 2015.
36-in steel pile, DTH Installation (temporary)*.	169 RMS **	159 SEL **	Denes <i>et al.</i> , 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
36-in steel pile, Vibratory Installation (permanent).	161 RMS **		U.S. Navy 2015.
36-in steel pile, Impact Installation (permanent).	187 RMS **	179 SEL **	U.S. Navy 2015.
36-in steel pile, DTH Installation (permanent)*.	169 RMS **	159 SEL **	Denes <i>et al.</i> , 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
No Bubble Curtain (depths greater than 60 ft)			
36-in steel pile, Vibratory Installation (temporary).	166 RMS		U.S. Navy 2015.
36-in steel pile, Vibratory Removal (temporary).	166 RMS		U.S. Navy 2015.
42-in steel pile, Vibratory Installation	168.2 RMS		Austin <i>et al.</i> 2016.
48-in steel pile, Vibratory Installation	168.2 RMS		Austin <i>et al.</i> 2016.
42-in steel pile, Impact Installation	198.6 RMS	186.7 SEL	Austin <i>et al.</i> 2016.
48-in steel pile, Impact Installation	198.6 RMS	186.7 SEL	Austin <i>et al.</i> 2016.
36-in steel pile, DTH Installation (temporary).	174 RMS	164 SEL	Denes <i>et al.</i> , 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
42-in steel pile, DTH Installation *	174 RMS	164 SEL	Denes <i>et al.</i> , 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.
48-in steel pile, DTH Installation *	174 RMS	171 SEL	Denes <i>et al.</i> , 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021.

Note: SELss = single strike sound exposure level; RMS = root mean square.

* Source levels here differ from those used in TMC's application as NMFS has updated their acoustic guidance on DTH, resulting in larger Level B harassment SPLs. (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance#other-nmfs-acoustic-thresholds-and-tools>).

** Attenuated source levels with 5dB reduction due to use of a bubble curtain during these activities (Caltrans, 2020; Austin *et al.*, 2016).

NMFS recommends treating DTH systems as both impulsive and continuous, non-impulsive sound source types simultaneously. Thus, impulsive thresholds are used to evaluate Level A harassment, and continuous thresholds are used to evaluate Level B harassment. With regards to DTH mono-hammers, NMFS recommends proxy levels for Level A harassment based on available data regarding DTH systems of similar sized piles and holes (Denes *et al.*, 2019; Guan and Miner, 2020; Reyff and Heyvaert, 2019; Reyff, 2020; Heyvaert and Reyff, 2021).

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient; for practical

spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and
 R_2 = the distance from the driven pile of the initial measurement.

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that lies between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for TMC's planned activities. The Level B harassment zones and areas of zones of

influence (ZOIs) for the planned activities are shown in Table 5.

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note

that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a

marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.*, the practical spreading value of 15). Inputs used in the User Spreadsheet (*e.g.*, number of piles per day, duration and/or strikes per pile) are presented in Table 1 of the notice of the proposed IHA (88 FR 9777, February 13, 2023). The maximum RMS SPL, SEL, and resulting isopleths are reported in Table 4 and 5.

TABLE 5—LEVEL A AND LEVEL B HARASSMENT ISOPLETHS FOR PILE DRIVING ACTIVITIES

Activity	Level A harassment zone (m)					Level B harassment zone (m)
	LF cetacean	MF cetacean	HF cetacean	Phocids	Otariids	
Bubble Curtain in use (depths of 60 ft or less)						
36-in steel pile, Vibratory Installation (temporary)	5.2	0.5	7.7	3.2	0.2	5,412
36-in steel pile, Vibratory Removal (temporary)	5.2	0.5	7.7	3.2	0.2	5,412
36-in steel pile, DTH Installation (temporary)	681.1	24.5	820.9	368.8	26.9	* 18,479
36-in steel pile, Vibratory Installation (permanent)	6.8	0.6	10.1	4.2	0.3	5,412
36-in steel pile, Impact Installation (permanent)	2,015.1	71.7	2,400.3	1,078.4	78.5	631
36-in steel pile, DTH Installation (permanent) *	799.7	28.4	952.6	428	31.2	* 18,479
No Bubble Curtain (depths greater than 60 ft)						
36-in steel pile, Vibratory Installation (temporary)	11.2	1	16.6	6.8	.05	11,659
36-in steel pile, Vibratory Removal (temporary)	11.2	1	16.6	6.8	.05	11,659
42-in steel pile, Vibratory Installation	20.6	1.8	30.5	12.5	0.9	16,343
48-in steel pile, Vibratory Installation	13	1.2	19.2	7.9	0.6	16,343
42-in steel pile, Impact Installation	6,570.9	233.7	7,827	3,516.4	256	3,744
48-in steel pile, Impact Installation	5,014.6	178.4	5,973.1	2,683.6	195.4	3,744
36-in steel pile, DTH Installation (temporary)	1,484.7	52.8	1,768.5	794.6	57.9	* 39,811
42-in steel pile, DTH Installation *	1,722.9	61.3	2,052.2	922	67.1	* 39,811
48-in steel pile, DTH Installation *	5,045.7	179.5	6,010.2	2,700.2	196.6	* 39,811

* Differs from TMC's application due to difference in source level use. See Table 4.

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including presence, local knowledge, group dynamics, or other relevant information, that will inform the take calculations. We also describe how the information provided above is brought together to produce a quantitative take estimate.

Available information regarding marine mammal occurrence and abundance in the vicinity of the Passage Canal includes local knowledge, previous marine construction projects in the Whittier area, and available scientific literature. A summary of

authorized take is in Table 7. To accurately describe species occurrence near the action area, marine mammals were described as either common or infrequent.

To obtain more accurate estimates of potential take by Level B harassment, TMC estimated an hourly occurrence probability of each marine mammal species in the action area rather than a weekly or daily estimation, since pile driving activities will not occur over an entire day, but rather over a certain number of hours. Occurrence probability estimates are based on conservative density approximations for each species and factor in historic data

of occurrence, seasonality, and group size in the Passage Canal and/or nearby Prince William Sound.

Assumptions for these hourly estimations were that common species (Steller sea lion, harbor seal) would have two group sightings per day in the Passage Canal, and infrequent species would have three group sightings per week in the Passage Canal, or slightly fewer than one group sighting every two days (Table 6). In these estimations, a sighting does not equal one animal; a sighting equals one group of each particular species or stock. To standardize observation estimates across species, these numbers were distilled

down to obtain the hourly occurrence probability for each species. Additionally, one day was equated to 12 hours rather than 24 hours to obtain a

rough estimate of observations during daylight hours when pile driving and project activities will occur, and to obtain more conservative estimates of

species occurrence. TMC states that this hourly estimate provides a more accurate representation of actual possible takes in Passage Bay.

TABLE 6—ESTIMATED OCCURRENCE OF GROUP SIGHTING OF MARINE MAMMALS

Species occurrence in the action area	Group sighting occurrence estimate		
	Weekly	Daily	Hourly
Common (Steller sea lion, harbor seal)	14	2	0.17
Infrequent (humpback whale, Dall's porpoise, killer whale)	3	0.5	0.04

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized.

Take was estimated using the hourly occurrence probability for each species, which was multiplied by the estimated group size and by the number of hours of each type of pile driving activity for total take estimate.

For species infrequently seen in Passage Canal (humpback whale, Dall's porpoise, and killer whale) and rarely seen close to the project location, only hours of pile driving for DTH and vibratory driving were used to calculate these species take estimates. Impact pile driving was excluded from these analyses because the Level A harassment isopleth was larger than the Level B harassment isopleth for low- and high-frequency cetaceans, and therefore construction will be shut down before they approach the Level B harassment zone. However, for killer whales, impact pile driving was excluded because killer whales are an infrequent visitor to Passage Canal and often highly visible. For impact pile driving, TMC will conservatively apply thresholds for high frequency cetaceans to killer whales. This precautionary measure will reduce potential impacts

to the highly vulnerable AT-1 killer whale stock that is found in this region should they enter the Passage Canal during the in-water work period.

Take by Level A harassment is also requested for Dall's porpoise and harbor seals given their frequency in the action area, the large Level A harassment zones for HF cetaceans and phocids, the possibility they may not be seen in the water before pile driving could be shut down, and the fact that Level A harassment isopleths for certain pile driving activities extend to Whittier Seafood's outfall, a known marine mammal foraging area.

The take calculations for Level A harassment are based on the occurrence estimate for the species in the largest Level B harassment zone (16,343 meters) reduced by a factor for each smaller Level A harassment isopleth. While NMFS updated the DTH source levels, resulting in DTH having the largest Level B harassment isopleth, the shoreline is limited in Passage Canal and the largest practical Level B harassment isopleth is the one used by TMC for the original calculation of take by Level A harassment. Therefore, the updated DTH values do not impact the take calculation. The Level A harassment isopleth for each species and specific activity was divided by the largest Level B harassment isopleth

(16,343 m), giving a species multiplier per hour for occurrence in the smaller Level A harassment isopleth. This was multiplied by the number of hours of the specific activity type, giving the estimate for take by Level A harassment during that activity. For example, the Level A harassment isopleth for phocid pinnipeds during impact pile driving of 36-in steel piles is 2,323 meters, so Level B harassment estimates are multiplied by a factor of 0.14 (2,323/16,343 = 0.14) to estimate take in the Level A harassment zone. All take by Level A harassment was conservatively calculated using isopleths from unattenuated source levels. Take by Level B harassment was calculated based on occurrence estimates for the area encompassed by the largest isopleth generated by unattenuated source levels (*i.e.*, all of Passage Canal).

Additionally, the shutdown zone for phocid pinnipeds was decreased compared to the calculated zone for pile driving activities that encompassed the public boat harbor approximately 1,500 meters away due to the possibility of harbor seals using the area as a haulout. The shutdown zone was reduced to 1,360-m for impact pile driving 42- and 48-in pile sizes and DTH drilling of 48-in piles and the calculated take by Level A harassment has been doubled for this species.

TABLE 7—AUTHORIZED AMOUNT OF TAKING AND PERCENT OF STOCK

Species	Stock	Average group size	Take by Level A harassment	Take by Level B harassment	Total take	Percent of stock
Humpback whale	Hawaii DPS	2.4	0	22	22	<1
	WNP DPS		0	1	1	<1
	Mexico DPS		0	2	2	<1
Dall's Porpoise	Alaska	4.3	9	36	45	<1
Killer Whale*	Alaska Resident	14	0	116	116	6
	GOA/Aleutian Islands/Bering Sea Transient		0	29	29	4.9
	Prince William Sound	3.5	40	170	210	<1
Harbor Seal	Western U.S.	4	0	218	218	<1

* AT-1 transient stock take calculation resulted in 0 takes, therefore no takes were requested or are authorized.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

Mitigation Measures

TMC must follow mitigation measures as specified below:

- Ensure that construction supervisors and crews, the monitoring team, and relevant TMC staff are trained prior to the start of all pile driving and DTH activity, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work;
- Employ Protected Species Observers (PSOs) and establish monitoring locations as described in the application, the Marine Mammal

Monitoring Plan, and the IHA. The Holder must monitor the project area to the maximum extent possible based on the required number of PSOs, required monitoring locations, and environmental conditions. For all pile driving and removal at least one PSO must be used. The PSO will be stationed as close to the activity as possible;

- The placement of the PSOs during all pile driving and removal and DTH activities will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone will not be visible (*e.g.*, fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected;

- Monitoring must take place from 30 minutes prior to initiation of pile driving or DTH activity (*i.e.*, pre-clearance monitoring) through 30 minutes post-completion of pile driving or DTH activity;

- Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in Table 8 are clear of marine mammals. Pile driving and DTH may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals;

- TMC must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer; and

- If a marine mammal is observed entering or within the shutdown zones indicated in Table 8, pile driving and DTH must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone (Table 8) or 15 minutes have passed without re-detection of the animal;

- As planned by the applicant, in water activities will take place only between civil dawn and civil dusk when PSOs can effectively monitor for the presence of marine mammals; during conditions with a Beaufort Sea State of 4 or less; when the entire shutdown zone and adjacent waters are visible

(*e.g.*, monitoring effectiveness in not reduced due to rain, fog, snow, *etc.*). Pile driving may continue for up to 30 minutes after sunset during evening civil twilight, as necessary to secure a pile for safety prior to demobilization during this time. The length of the post-activity monitoring period may be reduced if darkness precludes visibility of the shutdown and monitoring zones.

Shutdown Zones

TMC will establish shutdown zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity will occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will be based upon the Level A harassment zone for each pile size/type and driving method where applicable, as shown in Table 8.

TMC will apply a minimum shutdown zone of 10-m for all pile driving related activities using a bubble curtain. For pile driving related activities without a bubble curtain, the minimum shutdown zone for cetaceans is 35-m and for pinnipeds is 15-m.

Further, there will be a nominal 10-m shutdown zone for construction activity where acoustic injury is not the primary concern. This type of work could include (but is not limited to) the following activities: movement of the barge to the pile location; positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile); and removal of the pile from the water column/substrate via a crane (*i.e.*, deadpull). This 10-m zone applies for physical safety of marine mammals to prevent interaction with equipment. If an activity is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in Table 8 or 15 minutes have passed without re-detection of the animal. Construction activities must be halted upon observation of a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met entering or within the harassment zone.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented.

TMC will also establish shutdown zones for all marine mammals for which take has not been authorized or for which incidental take has been authorized but the authorized number of takes has been met. These zones are equivalent to the Level B harassment zones for each activity. If a marine mammal species not covered under this IHA enters the shutdown zone, all in-

water activities will cease until the animal leaves the zone or has not been observed for at least 1 hour, and NMFS will be notified about species and precautions taken. Pile removal will proceed if the non-authorized species is observed to leave the Level B harassment zone or if 1 hour has passed since the last observation.

If shutdown and/or clearance procedures will result in an imminent safety concern, as determined by TMC or its designated officials, the in-water activity will be allowed to continue until the safety concern has been addressed, and the animal will be continuously monitored.

TABLE 8—SHUTDOWN ZONES AND MONITORING ZONES

Activity	Minimum shutdown zone					Harassment zone
	Low-frequency (LF) cetaceans	Mid-frequency (MF) cetaceans	High-frequency (HF) cetaceans	Phocid	Otariid	
Barge movements, pile positioning, etc.	10	10	10	10	10	
Bubble Curtain in use (depths of 60-ft or less)						
36-in steel pile, Vibratory Installation (temporary)	10	10	10	10	10	5,415
36-in steel pile, Vibratory Removal (temporary)	10	10	10	10	10	5,415
36-in steel pile, DTH Installation (temporary)	700	35	825	370	35	** 16,345
36-in steel pile, Vibratory Installation (permanent)	10	10	10	10	10	5,415
36-in steel pile, Impact Installation (permanent)	2,055	180	2,400	1,100	80	635
36-in steel pile, DTH Installation (permanent)	800	35	1,000	430	35	** 16,345
No Bubble Curtain (depths greater than 60-ft)						
36-in steel pile, Vibratory Installation (temporary)	35	35	35	15	15	11,660
36-in steel pile, Vibratory Removal (temporary)	35	35	35	15	15	11,660
42-in steel pile, Vibratory Installation	35	35	35	15	15	16,345
48-in steel pile, Vibratory Installation	35	35	35	15	15	16,345
42-in steel pile, Impact Installation ..	6,575	1260	7,830	* 1,360	260	3,745
48-in steel pile, Impact Installation ..	5,015	1200	5,975	* 1,360	200	3,745
36-in steel pile, DTH Installation (temporary)	1,485	70	1,770	795	70	** 16,345
42-in steel pile, DTH Installation	1,770	70	2,055	925	70	** 16,345
48-in steel pile, DTH Installation	5,050	200	6,015	* 1,360	200	** 16,345

* For phocids (harbor seals) only, the Level A shutdown zone will be reduced to 1,360 m for impact pile driving of 42- and 48-in piles and DTH drilling of 48-in piles to exclude the Whittier Public Boat Harbor.

** Differs from Table 5 Level B harassment zone for DTH because 18,479-m and 39,811-m extends longer than Passage Canal, so land masses will block sound transmission and distances will be truncated. It will also be impractical to monitor this whole zone outside of Passage Canal. Instead, DTH monitoring zone will be the entirety of the Passage Canal and equivalent to the largest Level B harassment zone.

¹ TMC has elected to conservatively apply thresholds for HF cetaceans to killer whales for impact pile driving. This species is an infrequent visitor to Passage Canal and is often highly visible, allowing for easier application of more conservative shutdown zones. This measure will reduce potential impacts to the highly vulnerable AT-1 killer whale stock that is found in this region should they enter Passage Canal during the in-water work period.

Protected Species Observers

The placement of PSOs during all construction activities (described in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (e.g., fog, heavy rain), pile driving will be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

PSOs will monitor the full shutdown zones and the remaining Level A harassment and the Level B harassment zones to the extent practicable. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project areas outside the shutdown zones, and thus prepare for a potential cessation of activity

should the animal enter the shutdown zone.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute

period. If a marine mammal is observed within the shutdown zones listed in Table 8, pile driving activity will be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.*, the entire shutdown zone and surrounding waters must be visible to the naked eye).

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Bubble Curtain

A bubble curtain must be employed during all pile installation and removal in depths of 60 ft or less. The bubble curtain must be deployed in manner guaranteed to distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent mudline contact. No parts of the ring or other objects may prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include

the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the conditions in this section, the Monitoring Plan, and this IHA. Marine mammal monitoring during pile driving activities will be conducted by PSOs meeting NMFS' the following requirements:

- Independent PSOs (*i.e.*, not construction personnel) who have no other assigned tasks during monitoring periods will be used;
- At least one PSO will have prior experience performing the duties of a PSO during construction activity

pursuant to a NMFS-issued incidental take authorization;

- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• Where a team of three or more PSOs is required, a lead observer or monitoring coordinator will be designated. The lead observer will be required to have prior experience working as a marine mammal observer during construction.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary;
- TMC must employ up to four PSOs during all pile driving and DTH activities. A minimum of two PSOs (including the lead PSO) must be assigned to the active pile driving or DTH location to monitor the shutdown zones and as much of the Level B harassment zones as possible.
- TMC must establish the following monitoring locations with the best views of monitoring zones as described in the IHA and Marine Mammal Monitoring Plan.
 - Two to four PSOs will be onsite during in-water activities associated with the Whittier Head of the Bay Cruise Ship Dock Project, likely stationed in the following locations PSOs will likely be located at Station 1: stationed just to the south of the site on the shore, Station 2: stationed off Depot Road near the freight loading dock, Station 3: stationed along the shoreline northeast of the Emerald Cove Trailhead, and Station 4: stationed on a boat triangulating an area between Emerald Island, the north shore of Passage Canal, southeast towards

Gradual Point, and back southwest toward Trinity Point and Emerald Island as shown in Figure 8 of the Marine Mammal Monitoring Plan. All PSOs will have access to high-quality binoculars, range finders to monitor distances, and a compass to record bearing to animals as well as radios or cell phones for maintaining contact with work crews.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after all in water construction activities. In addition, PSOs will record all incidents of marine mammal occurrence, regardless of distance from activity, and will document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

TMC shall conduct briefings between construction supervisors and crews, PSOs, TMC staff prior to the start of all pile driving activities, and when new personnel join the work. These briefings will explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures.

Acoustic Monitoring

Acoustic monitoring must be conducted in accordance with the Acoustic Monitoring Plan. TMC must conduct hydroacoustic monitoring of two (one 36-in and one 48-in) piles each from different locations during DTH drilling.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance from any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.*, impact, vibratory, or DTH) and the total equipment duration for vibratory removal or DTH for each pile or hole or total number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring;

- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;

- Upon observation of a marine mammal, the following information:
 - Name of PSO who sighted the animal(s) and PSO location and activity at the time of sighting;
 - Time of sighting;
 - Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentifiable), PSO confidence in identification, and the composition of the group if there is a mix of species;
 - Distance and bearing of each marine mammal observed relative to the pile being driven for each sightings (if pile driving was occurring at time of sighting);
 - Estimated number of animals (min/max/best estimate);
 - Estimated number of animals by cohort (adults, juveniles, neonates, group composition, sex class, etc.);
 - Animal's closest point of approach and estimated time spent within the harassment zone; and
 - Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).

- Number of marine mammals detected within the harassment zones and shutdown zones; by species;
- Detailed information about any implementation of any mitigation triggered (*e.g.*, shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any; and
- If visibility degrades to where PSO(s) cannot view the entire harassment zones, additional PSOs may be positioned so that the entire width is visible, or work will be halted until the entire width is visible to ensure that any humpback whales entering or within the harassment zone are detected by PSOs.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Acoustic Monitoring Plan

The report must include:

- Type and size of pile being driven, substrate type, method of driving during recordings (including hammer model and energy setting(s)), total pile driving duration, and water depth at the pile;
- Whether a sound attenuation device is used and, if so, a detailed description of the device and the duration of its use per pile;
- Number of strikes and strike rate, depth of substrate to penetrate; pulse duration and mean, median, and maximum sound levels (dB re: 1 μ Pa); root mean square sound pressure level (SPLrms), peak sound pressure level (SPLpeak), cumulative sound exposure level (SELcum), and single strike exposure sound level (SEL s-s);
- One-third octave band spectrum and power spectral density plot for each pile monitored; and
- Environmental data, including but not limited to, the following: wind speed and direction, air temperature, humidity, surface water temperature, water depth, wave height, weather conditions, and other factors that could contribute to influencing the airborne and underwater sound levels (*e.g.*, aircraft, boats, *etc.*).

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder must immediately cease the specified activities and report the incident to the Office of Protected Resources (OPR) (PR.ITP.MonitoringReports@noaa.gov), NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, TMC must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;

- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Table 1 for which take could occur, given that NMFS expects the anticipated effects of the pile driving/removal and DTH on different marine mammal stocks to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

Pile driving and DTH activities associated with the project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B

harassment and, for some species, Level A harassment from underwater sounds generated by pile driving activities. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

No serious injury or mortality is expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for humpback whales, killer whales, or Steller sea lion due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species and the rarity of these species near the action area. The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Take by Level A harassment is authorized for two species (Dall’s porpoise and harbor seal) as the Level A harassment zones exceed the size of the shutdown zones for specific construction scenarios. Additionally, these species could be found more often near the action area and are cryptic in nature. Therefore, there is the possibility that an animal could enter a Level A harassment zone without being detected, and remain within that zone for a duration long enough to incur PTS. Level A harassment of these species is authorized to be conservative. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take by Level A harassment authorized is very low for both marine mammal stocks and species. If hearing impairment occurs, it is most likely that the affected animal will lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred will not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Additionally, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a

short duration. However, since the hearing sensitivity of individuals that incur TTS is expected to recover completely within minutes to hours, it is unlikely that the brief hearing impairment would affect the individual’s long-term ability to forage and communicate with conspecifics, and will therefore not likely impact reproduction or survival of any individual marine mammal, let alone adversely affect rates of recruitment or survival of the species or stock.

The Level A harassment zones identified in Table 5 are based upon an animal exposed to pile driving or DTH up to four piles per day. Given the short duration to impact drive or vibratory install or extract, or use DTH drilling on each pile, and breaks between pile installations (to reset equipment and move piles into place), an animal will have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely give marine mammal movement in the area. If an animal was exposed to accumulated sound energy, the resulting PTS will likely be small (*e.g.*, PTS onset) at lower frequencies where pile driving energy is concentrated, and unlikely to result in impacts to individual fitness, reproduction, or survival.

The nature of the pile driving project precludes the likelihood of serious injury or mortality. For all species and stocks, take will occur within a limited, confined area (adjacent to the project site) of the stock’s range. Level A and Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

Behavioral responses of marine mammals to pile driving, pile removal, and DTH at the sites in the Passage Canal are expected to be mild, short term, and temporary. Marine mammals within the Level B harassment zones may not show any visual cues they are disturbed by activities or they could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given that pile driving, pile removal, and DTH will occur for only a portion of the project’s duration, any harassment occurring will be temporary. Additionally, many of the species present in region will only be present temporarily based on seasonal patterns or during transit between other habitats. These temporary present species will be exposed to even smaller

periods of noise-generating activity, further decreasing the impacts.

For all species, there are no known Biologically Important Areas (BIAs) near the project area that will be impacted by TMC's planned activities. While southcentral Alaska is considered an important area for feeding humpback whales between March and May (Ellison *et al.*, 2012), it is not currently designated as critical habitat for humpback whales (86 FR 21082, April 21, 2021).

In addition, it is unlikely that minor noise effects in a small, localized area of habitat will have any effect on each stock's ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Authorized Level A harassment will be very small amounts and of low degree;
- Level A harassment takes of only Dall's porpoise and harbor seals;
- For all species, the Passage Canal is a very small and peripheral part of their range;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment will be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where impact or vibratory pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints of the activities;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations;
- The ensnified areas are very small relative to the overall habitat ranges of all species and stocks, and will not adversely affect ESA-designated critical

habitat for any species or any areas of known biological importance;

- The lack of anticipated significant or long-term negative effects to marine mammal habitat; and
- TMC will implement mitigation measures including soft-starts and shutdown zones to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment is, at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS plans to authorize is below one-third of the estimated stock abundance for all species (in fact, take of individuals is less than five percent of the abundance of the affected stocks, see Table 7). This is likely a conservative estimate because we assume all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs will count them as separate takes if they cannot be individually identified.

Additionally, the most recent estimate for the Alaska stock of Dall's porpoise was 13,110 animals; however this number just accounts for a portion of the stock's range. Therefore, the 45 takes of this stock planned for authorization is believed to be an even smaller portion of the overall stock abundance.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an "unmitigable adverse impact" on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The Alutiiq and Eyak people of Prince William Sound traditionally harvested marine mammals, however the last recorded harvest of marine mammals in Whittier was in 1990, where it was reported that seven marine mammals were harvested (ADF&G 2022b). Other Prince William Sound coastal communities such as Cordova, Chenega, and Tatitlek report recent subsistence harvest or use of marine mammals. The most recent report of harbor seal and Steller sea lion harvest was reported in Tatitlek in 2014 (ADF&G 2022b).

Subsistence hunters in Prince William Sound report having to travel farther from their home communities to be successful when harvesting marine mammals (Keating *et al.* 2020). However, their range was not reported to extend into Passage Canal, as all three communities are located at least 60 miles away by boat (Fall and Zimpelman 2016). The planned project is not likely to adversely impact the availability of any marine mammal species or stocks that are commonly used for subsistence purposes or to impact subsistence harvest of marine mammals in the region because:

- Construction activities are localized and temporary;
- Mitigation measures will be implemented to minimize disturbance of marine mammals in the action area; and,

- The project will not result in significant changes to availability of subsistence resources.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the mitigation and monitoring measures, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from TMC's planned activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

NMFS is authorizing take of Western U.S. Steller Sea Lion, Western North Pacific Humpback whale, and the California/Oregon/Washington Humpback whale, which are listed under the ESA.

The Permit and Conservation Division completed a Section 7 consultation with the Alaska Regional Office for the issuance of this IHA. The Alaska Regional Office's biological opinion states that the action is not likely to jeopardize the continued existence of the listed species.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA

qualifies to be categorically excluded from further NEPA review.

Authorization

As a result of these determinations, NMFS issues an IHA to TMC for conducting Whittier head of the Bay Cruise Ship Dock project in Whittier, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The IHA can be found at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-turnagain-marine-constructions-cruise-dock-construction>.

Dated: March 29, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-06895 Filed 4-3-23; 8:45 am]

BILLING CODE 3510-22-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, April 5, 2023; 10:30 a.m.

PLACE: The meeting will be held virtually and in person at Bethesda, MD.

STATUS: Commission Meeting—Closed to the Public.

MATTERS TO BE CONSIDERED: *Briefing Matter.*

CONTACT PERSON FOR MORE INFORMATION:

Alberta E. Mills, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301-504-7479 (Office) or 240-863-8938 (Cell).

Dated: March 30, 2023.

Alberta E. Mills,

Commission Secretary.

[FR Doc. 2023-07032 Filed 3-31-23; 11:15 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of 2023 Out-of-Cycle Public Interface Control Working Group for Navstar GPS Public Documents

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Space Systems Command, Military Communications & Positioning, Navigation, Timing Directorate will host an out-of-cycle 2023 Public Interface

Control Working Group on June 7, 2023. The working group will review proposed changes to NAVSTAR GPS public document ICD-GPS-870 (Control Segment (OCX) to User Support Interface), as well as familiarize GPS users with new GPS (XML based) data products and a conversion tool associated with the upcoming fielding of the Next Generation Operational Control System (OCX). Additional details can be found below.

DATES: Open to the public Wednesday, June 7, 2023, from 08:30 a.m. to 12:30 p.m. (Pacific Time).

ADDRESSES: This virtual meeting can be accessed via the following dial-in numbers and links:

Primary Dial In: +1 (571) 200-1700, Meeting ID: 161 531 3774#, Passcode: 771952#.

Primary Screen Share URL: <https://saicwebconferencing.zoomgov.com/j/1615313774>.

Backup Dial In: +1 (410) 874-6740, Meeting ID: 614 293 598#.

Backup Screen Share URL: https://dod.teams.microsoft.us/l/meetup-join/19%3adod%3ameeting_32e070b7f0624011a1457fdf1f9daad8%40thread.v2/0?context=%7b%22id%22%3a%228331b18d-2d87-48ef-a35f-ac8818ebf9b4%22%2c%22oid%22%3a%2221883ab7-1eb2-4341-a69f-55e4192694f8%22%7d.

FOR FURTHER INFORMATION CONTACT:

Please email SSC.CGEP.workflow@us.af.mil and/or contact Captain Andrew Sweeten at 310-653-9603 or Mr. Daniel Godwin at 310-653-2329.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to update the public on proposed GPS public document changes, collect issues/comments for analysis and adjudicate subject comments for possible incorporation into future GPS public document revisions. When OCX is fielded, the current (5) plain text data products (as defined in ICD-GPS-240) will be replaced by (4) XML based data products. These products include the GPS Advisory, GPS Advisory Collection, Ops Status, and the Public Common Almanac. The subject meeting will also present a conversion tool and other information necessary for GPS users to access the new product formats and ensure backwards compatibility. The out-of-cycle 2023 Public Interface Control Working Group is open to the general public.

Comments to the proposed changes will be collected, catalogued, and adjudicated for potential inclusion. If accepted, these changes will be processed through the government

change management process for ICD–GPS–870. All comments must be submitted in a Comments Resolution Matrix. This form along with the proposed change notices, public document baseline documents and the official meeting notice are posted at: <https://www.gps.gov/technical/icwg/meetings/2023/06/>.

Please submit comments to the Space Systems Command GPS Requirements Section (SSC/CGEP) workflow at SSC.CGEP.workflow@us.af.mil by April 12, 2023. For those who would like to attend and participate, we request that you register no later than May 10, 2023. Please send the registration information to SSC.CGEP.workflow@us.af.mil, providing your name, organization, telephone number, email address, and country of citizenship. Backup dial-in & screen share website will only be used in case of primary system technical difficulties.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–06891 Filed 4–3–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Notice of federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Tuesday, April 11, 2023 from 8:15 a.m. to 5:00 p.m. and Wednesday, April 12, 2023 from 8:15 a.m. to 4:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, Designated Federal Officer (DFO), (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), kevin.a.doxey.civ@mail.mil (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: <http://www.acq.osd.mil/dsb/>. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of Chapter 10 of title 5, U.S. Code (commonly known as the “Federal Advisory Committee Act (FACA)”), section 552b(c) of title 5, U.S. Code (commonly known as the “Government in the Sunshine Act”), and sections 102–3.140 and 102–3.150 of title 41, Code of Federal Regulations (CFR).

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its April 11–12, 2023 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD’s scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB’s mission. DSB membership will meet to discuss the 2023 DSB Summer Study on Climate Change and Global Security (“the DSB Summer Study”).

Agenda: The meeting will begin on Tuesday, April 11, 2023 at 8:15 a.m. with administrative opening remarks from Mr. Kevin Doxey, DFO and Executive Director, and a classified overview of the objectives of the Summer Study from Dr. Eric Evans, the DSB Chair. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 5:00 p.m. On Wednesday, April 12, 2023, the DSB members will meet in a breakout session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Next, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. Following break, the DSB members will meet in a plenary session to discuss classified strategies for anticipating the global stresses and possible conflict due to climate change. The meeting will adjourn at 4:00 p.m.

Meeting Accessibility: In accordance with 5 U.S.C. 1009(d) and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB’s findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with 5 U.S.C. 1009(a)(3) and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO at the email address provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: March 29, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–06860 Filed 4–3–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2022–FSA–0152]

Privacy Act of 1974; Matching Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice of a New Matching Program.

SUMMARY: This provides notice of the establishment of the matching program between the U.S. Department of

Education (Department) and the Department of Defense (DoD), which sets forth the terms, safeguards, and procedures under which the DoD will disclose data to the Department on service members deployed to areas that qualify for imminent danger pay (IDP) or hostile fire pay (HFP) as described in Defense Manpower Data Center Base (DMDC 01) System of Records Notice, routine use 15.b. This matching program will enable the Department to provide no-interest accrual benefits on qualifying loans made under title IV of the Higher Education Act of 1965, as amended (HEA) during the time those service members were deployed to qualifying locations.

DATES: Submit your comments on the proposed matching program on or before May 4, 2023.

The matching program will go into effect 30 days after the publication of this notice, on April 4, 2023, unless comments have been received from interested members of the public requiring modification and republication of the notice. The matching program will continue for 18 months after the effective date and may be renewed for an additional 12 months if, within 3 months prior to the expiration of the 18 months, the respective Data Integrity Boards of the Department and DoD determine that the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). Information on using [Regulations.gov](https://www.regulations.gov), including instructions for finding a rule on the site and submitting comments, is available on the site under “FAQ.” If you require an accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comment only once. Additionally, please include the Docket ID at the top of your comments.

Privacy Note: The Department’s policy is to generally make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only

information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Ron Bennett, Group Director, Program Technical & Business Support Group, Partner and Participation Oversight, Federal Student Aid, U.S. Department of Education, 830 First Street NE, Washington, DC 20202–5320.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: We provide this notice in accordance with Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular No. A–108.

Participating Agencies: The U.S. Department of Education and the U.S. Department of Defense.

Authority for Conducting the Matching Program: The Department’s legal authority to enter into this matching program is section 455(o) of the HEA (20 U.S.C. 1087e(o)), and the Department is authorized to disclose records to DoD by subsection (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)).

DoD’s legal authority for this matching program is provided by section 455(o) of the HEA (20 U.S.C. 1087e(o)), and DoD is authorized to disclose records to the Department by subsection (b)(3) of the Privacy Act (5 U.S.C. 552a(b)(3)).

Purpose(s): The matching program will assist the Department in its obligation to ensure that borrowers who have loans first disbursed on or after October 1, 2008, made under the William D. Ford Federal Direct Loan Program (20 U.S.C. 1087a *et seq.*) or a TEACH grant first disbursed on or after October 1, 2008, under the TEACH Grant Program (20 U.S.C. 1070g *et seq.*), which are collectively referred to herein as “title IV loans”, with outstanding balances receive the no-interest accrual benefit on their eligible title IV loans during the period of time they received IDP or HFP pay. The Department will proactively apply the no-interest accrual benefit to the borrower’s eligible title IV loans and notify the borrower that, as a result of the matching program, the borrower does not need to submit further documentation of the borrower’s eligibility for the benefit. The Department’s notice also will inform the borrower that the Department will accept DoD matched information in lieu of the borrower’s submission of DoD

payroll documentation, thereby making it easier for the borrower to receive the no-interest accrual benefit.

Categories of Individuals: The matching program involves borrowers who have title IV loans with outstanding balances who are listed on the Servicemembers Civil Relief Act (SCRA) website at <https://scra.dmdc.osd.mil/scra/#/home> as military servicemembers and who are identified by DoD as being deployed to areas that qualify for IDP or HFP.

Categories of Records: The records to be used in the matching program are described as follows: The Department will disclose to DoD the name (first, middle and last), and Social Security Number (SSN) of borrowers from the National Student Loan Data System (NSLDS) (18–11–06) who the Department identifies as being military servicemembers via the SCRA website. DoD will then disclose to the Department the name (first middle and last), DOB, and SSN of all service members who served in a qualifying IDP or HFP deployment along with their beginning and ending deployment dates and the total number of days deployed for each qualified deployment.

The Department will match the data elements of name, DOB, and SSN received from DoD with the Department’s records on borrowers of title IV loans with balances on such loans.

System(s) of Records: The Department will disclose records to DoD from its system of records identified as “National Student Loan Data System (NSLDS)” (18–11–06), which was last published in full in the **Federal Register** on September 22, 2022 (87 FR 57873) pursuant to routine use (1)(a) and will pass the relevant matched borrower data to the identified loan servicer to apply the no-interest benefit covered by the “Common Services for Borrowers” (CSB) (18–11–16) system, as last published in the **Federal Register** in full on September 13, 2022 (87 FR 56003). The Department has determined that the NSLDS system and CSB system of records notice contains appropriate routine use disclosure authority and that the use is compatible with the purpose for which the information is collected.

DoD will disclose records back to the Department from its system of records identified as “Defense Manpower Data Center Data Base (DMDC 01), which was last published in full in the **Federal Register** on February 27, 2019 (84 FR 6383) and subsequently modified on April 16, 2019 (84 FR 15605), pursuant to routine use 15.b. DoD has determined that the DMDC 01 system of records

notice contains appropriate routine use disclosure authority and that the use is compatible with the purpose for which the information is collected.

The Department will then match the information provided by DoD with records in the Department's NSLDS system of records.

Accessible Format: On request to the program contact person(s) listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Richard Cordray,
Chief Operating Officer, Federal Student Aid.
[FR Doc. 2023-06937 Filed 4-3-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No. ED-2023-SCC-0058]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; FY 2023 Child Care Access Means Parents in School Application Package 84.335A (1894-0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement with change of a

previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 4, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link. **FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Harold Wells, 202-453-6131.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: FY 2023 Child Care Access Means Parents in School Application Package 84.335A (1894-0001).

OMB Control Number: 1840-0737.

Type of Review: A reinstatement with change of a previously approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 350.

Total Estimated Number of Annual Burden Hours: 9,800.

Abstract: The fiscal year (FY) 2023 Child Care Access Means Parents in School (CCAMPIS) Program grant application package contains the information and instructions needed to submit a complete application to the

U.S. Department of Education (Department) through Grants.gov.

The Application requests information from applicants during the competitive phase. The information collected is reviewed by non-federal reviewers to determine which applicants meet the eligibility criteria to be awarded funds under the CCAMPIS Program to assist awardees with subsidizing the child care fees of qualifying student-parents enrolled at the awarded institution.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894-0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: March 30, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023-06931 Filed 4-3-23; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Negotiated Rulemaking Committee; Public Hearings; Correction

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish a negotiated rulemaking committee; correction.

SUMMARY: On March 24, 2023, the Department of Education (Department) published in the **Federal Register** a notice of our intent to establish one or more negotiated rulemaking committee(s), which may include a subcommittee, to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). We are correcting the deadline for written comments through the Federal eRulemaking portal to April 24, 2023. All other information in the notice remains the same.

DATES: This correction is applicable on April 4, 2023.

FOR FURTHER INFORMATION CONTACT: Ashley Clark, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C-185, Washington, DC 20202. Telephone: (202) 453-7977. Email: ashley.clark@ed.gov.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

SUPPLEMENTARY INFORMATION: On March 24, 2023, we published a notice of our intent to establish a negotiated rulemaking committee in the **Federal Register** (88 FR 17777). In this, we indicated that the deadline for written public comments through the Federal eRulemaking portal is April 14, 2023. However, we are correcting the deadline for written comments to April 24, 2023.

All other information in the notice remains the same.

Correction

In FR Doc. 2023–06028 appearing on page 17777 of the **Federal Register** published on March 24, 2023, we make the following correction:

On page 17778, under PUBLIC HEARINGS, we are revising the date that we will accept written comments via the Federal eRulemaking portal to be: April 24, 2023.

Program Authority: 20 U.S.C. 1098a.

Accessible Format: On request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this notice and intent to establish a negotiated rulemaking committee in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, Braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2023–06913 Filed 4–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0018]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Cash Management Contract URL Collection

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 4, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Cash Management Contract URL Collection.

OMB Control Number: 1845–0147.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 573.

Total Estimated Number of Annual Burden Hours: 46.

Abstract: The Department of Education (the Department) is seeking an extension of OMB control number 1845–0147 for the collection of URLs hosting institutional contracts and contract data relating to campus banking agreements. The regulatory sections for this collection include 34 CFR 668.164(e)(2)(viii) and 34 CFR 668.164(f)(4)(iii)(B), are unchanged. The Department and the public have a strong interest in knowing the terms of marketing contracts of the millions of students receiving millions of dollars in Federal student aid. The Higher Education Act of 1965, as amended (HEA) strongly supports providing important consumer information to students and the public, as evidenced in several parts of the law. The increased transparency will help ensure accountability and encourage institutional practices that are in the interest of students.

Dated: March 30, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–06928 Filed 4–3–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Request for Information—Foundation for Energy Security and Innovation (FESI)

AGENCY: Office of Technology Transitions, Department of Energy.

ACTION: Request for information (RFI); reopening of public comment period.

SUMMARY: On February 15, 2023, the U.S. Department of Energy (DOE) published a request for information to seek input on how DOE stakeholders may engage with the Foundation for Energy Security and Innovation (FESI) directly, and how DOE may engage with the FESI and communities it will serve. Comments were due by March 27, 2023. In response to public request, DOE is reopening the comment period for 14 days

to allow interested parties additional time to provide input.

DATES: The comment period for the request for information, published on February 15, 2023 (88 FR 9876), which closed on March 27, 2023, is hereby reopened. Responses should be submitted by April 18, 2023.

ADDRESSES: Interested parties are to submit comments electronically to FESI.RFI@hq.doe.gov with the subject line "FESI RFI Response" no later than April 18, 2023. All responses must be submitted as a Microsoft Word document (.doc/.docx) of no more than 5 pages in length, with black, Times New Roman, 12 point font, and 1 inch margins as an attachment to an email. The document cannot exceed 2MB in size. Only electronic responses to the above email address will be accepted. DOE will not consider responses submitted by any other means.

Note: If clicking on the above link gives you an error message, you must CUT AND PASTE the URL into your browser to reach the web page.

FOR FURTHER INFORMATION CONTACT: Mary Yamada, (202) 586–2000, FESI.RFI@hq.doe.gov.

SUPPLEMENTARY INFORMATION: DOE published a Request for Information (RFI) on February 15, 2023, seeking input from the public on how DOE stakeholders may engage with the Foundation for Energy Security and Innovation (FESI) directly, and how DOE may engage with the FESI and communities it will serve (88 FR 9876). In response to public request, DOE is re-opening the comment period and will consider any comments received by April 18, 2023. In the Request for Information, DOE sought information from potential stakeholder groups including, but not limited to:

- Philanthropic and non-profit organizations.
- Community stakeholders.
- DOE's National Laboratory foundations.
- Potential investors in companies developing technologies aligned with the DOE mission.
- Industry stakeholders, especially those representing diverse regions, sectors, and communities.
- Other potential stakeholders or collaborators of FESI.

Questions seeking input on potential objectives and activities for DOE engagement with the FESI:

1. Which aspects of the DOE mission¹ and energy technology commercialization can you identify as

potentially benefitting from FESI's involvement?

2. Once the FESI is established, what mission areas would you recommend DOE prioritize working on with the FESI?

3. In what ways would you recommend DOE seek support of the FESI to carry out the mission areas identified?

4. To assist DOE in understanding and potentially better aligning with stakeholder interest, in what ways would you recommend DOE engage with organizations to determine what they seek to accomplish?

5. How would you envision DOE engage with the FESI to:

- a. Better support communities wishing to participate in the energy transition?
- b. Better support industry and small businesses wishing to participate in the energy transition?
- c. Drive long-term climate and clean energy strategy?
- d. Broaden participation in energy technology development among individuals from historically underrepresented groups or regions?
- e. Support the commercialization of energy technologies?
- f. Support workforce development?
- g. Foster collaboration and partnerships with researchers from the Federal Government, State governments, institutions of higher education, including historically Black colleges or universities, Tribal Colleges or Universities, and minority-serving institutions, federally funded research and development centers (FFRDCs), industry, and nonprofit organizations for the research, development, demonstration and deployment of transformative energy and associated technologies?

6. What potential challenges should DOE be aware of to proactively manage given the intent to establish the FESI?

7. What other ways could the establishment of FESI support the DOE missions? How could DOE engage effectively with the FESI on these activities?

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about

the confidential status of the information and treat it according to its determination.

Signing Authority

This document of the Department of Energy was signed on March 29, 2023, by Dr. Vanessa Chan, Chief Commercialization Officer and Director of the Office of Technology Transitions, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 29, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–06880 Filed 4–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: The Department of Energy hereby publishes a notice of open meeting of the Secretary of Energy Advisory Board (SEAB). This meeting will be held virtually for members of the public, and in-person for SEAB members. The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 25, 2023; 1:00 p.m.–4:15 p.m. Eastern Time

ADDRESSES: Virtual meeting for members of the public. Board members, DOE representatives, agency liaisons, and Board support staff will participate in-person at the Department of Energy (DOE) Forrestal Building at, 1000 Independence Avenue SW, Washington, DC 20585. Registration is required by registering at the SEAB April 25 meeting page at: www.energy.gov/seab/seab-meetings.

FOR FURTHER INFORMATION CONTACT: David Borak, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW,

¹ DOE's mission statement can be found at the following link: <https://www.energy.gov/mission>.

Washington, DC 20585; email: seab@hq.doe.gov; telephone: (202) 586–5216.

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This is the seventh meeting of Secretary Jennifer M. Granholm's SEAB.

Tentative Agenda: The meeting will start at 1:00 p.m. Eastern Time on April 25, 2023. The tentative meeting agenda includes: roll call, remarks from the Secretary, remarks from the SEAB chair, discussion of laboratory innovation, and public comments. The meeting will conclude at approximately 4:15 p.m. Meeting materials can be found here: <https://www.energy.gov/seab/seab-meetings>.

Public Participation: The meeting is open to the public via a virtual meeting option. Individuals who would like to attend must register for the meeting here: <https://www.energy.gov/seab/seab-meetings>.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed three minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, seab@hq.doe.gov, no later than 5:00 p.m. on Monday, April 24, 2023.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to David Borak, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to: seab@hq.doe.gov.

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Borak. He may be reached at the above postal address or email address, or by visiting SEAB's website at www.energy.gov/seab.

Signed in Washington, DC, on March 29, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–06935 Filed 4–3–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–111–000.

Applicants: Westlake Chemicals & Vinyls LLC.

Description: Westlake Chemicals & Vinyls LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/29/23.

Accession Number: 20230329–5190.

Comment Date: 5 p.m. ET 4/19/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–754–001.

Applicants: PacifiCorp.

Description: Compliance filing: Revisions to GIP re Electric Storage Resources Compliance to be effective 3/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5180.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1010–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to Service Agreement No. 3756, Queue#None to be effective 4/2/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5210.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1030–001.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Submission of Amendment to Extend Time for Action in ER23–1030 to be effective 11/29/2022.

Filed Date: 3/29/23.

Accession Number: 20230329–5108.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1304–000.

Applicants: MFT Energy US 1 LLC.

Description: Supplement to March 10, 2023, MFT Energy US 1 LLC tariff filing.

Filed Date: 3/24/23.

Accession Number: 20230324–5203.

Comment Date: 5 p.m. ET 4/14/23.

Docket Numbers: ER23–1493–000.

Applicants: RWE Clean Energy Wholesale Services, Inc.

Description: § 205(d) Rate Filing: Notice of Succession for RWE Clean Energy Wholesale to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5073.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1494–000.

Applicants: RWE Clean Energy Solutions, Inc.

Description: § 205(d) Rate Filing: Notice of Succession for RWE Clean Energy Solutions to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5077.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1495–000.

Applicants: SEP II, LLC.

Description: § 205(d) Rate Filing: Notice of Succession for SEP II, LLC to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5085.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1496–000.

Applicants: GSG Wind, LLC.

Description: Compliance filing: Notice of Succession and Revised Reactive Service Rate Schedule to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5112.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1497–000.

Applicants: GSG Wind, LLC.

Description: Compliance filing: Notice of Succession and Revised Market-Based Rate Tariff to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5115.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1498–000.

Applicants: Iron Horse Battery Storage, LLC.

Description: § 205(d) Rate Filing: Changes in Category Status and Notices of Succession to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5119.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1499–000.

Applicants: RWE Clean Energy O&M, LLC.

Description: § 205(d) Rate Filing: Changes in Category Status and Notices of Succession to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5122.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1500–000.

Applicants: RWE Clean Energy QSE, LLC.

Description: § 205(d) Rate Filing: Changes in Category Status and Notices of Succession to be effective 3/30/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5125.

Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1501–000.

Applicants: RWE Supply & Trading Americas, LLC.

Description: § 205(d) Rate Filing: Changes in Category Status and Notices of Succession to be effective 3/30/2023.
Filed Date: 3/29/23.

Accession Number: 20230329–5128.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1502–000.
Applicants: RWE Supply & Trading US, LLC.

Description: § 205(d) Rate Filing: Changes in Category Status and Notices of Succession to be effective 3/30/2023.
Filed Date: 3/29/23.

Accession Number: 20230329–5130.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1503–000.
Applicants: Cavalier Solar A, LLC.

Description: Baseline eTariff Filing: Cavalier Solar A, LLC MBR Tariff to be effective 5/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5131.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1504–000.
Applicants: Partin Solar LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 5/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5132.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1505–000.
Applicants: Midcontinent

Independent System Operator, Inc., City Water and Light Plant of the City of Jonesboro.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–03–29 Jonesboro Integration Revisions to Schedules 7, 8, and 9 to be effective 6/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5133.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1506–000.
Applicants: Midcontinent

Independent System Operator, Inc., City Water and Light Plant of the City of Jonesboro.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–03–29 EAL–AECC Amended JPZ Agreement inclusion of Jonesboro to be effective 6/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5134.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1507–000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of WMPA, SA No. 4099, Queue No. X1–087 to be effective 3/31/2023.

Filed Date: 3/29/23.

Accession Number: 20230329–5175.
Comment Date: 5 p.m. ET 4/19/23.

Docket Numbers: ER23–1508–000.
Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: OATT Reconciliation and Clean-up Filing to be effective 3/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5183.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1509–000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISAs, SA Nos. 4122, 4125, 4126, 4129 and 4130 to be effective 4/1/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5184.
Comment Date: 5 p.m. ET 4/19/23.
Docket Numbers: ER23–1510–000.
Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): NYISO-National Grid Joint 205: Amended SGIA Regan Solar Project SA2574 to be effective 3/15/2023.

Filed Date: 3/29/23.
Accession Number: 20230329–5191.
Comment Date: 5 p.m. ET 4/19/23.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH23–8–000.
Applicants: Public Sector Pension Investment Board.

Description: Public Sector Pension Investment Board submits FERC 65–A Exemption Notification.

Filed Date: 3/28/23.
Accession Number: 20230328–5291.
Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: PH23–9–000.
Applicants: Public Sector Pension Investment Board.

Description: Public Sector Pension Investment Board submits FERC 65–B Notice of Non-Material Change in Fact to Waiver Notification.

Filed Date: 3/28/23.
Accession Number: 20230328–5292.
Comment Date: 5 p.m. ET 4/18/23.

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: March 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06984 Filed 4–3–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM16–17–001; ER11–3615–000]

Data Collection for Analytics and Surveillance and Market-Based Rate Purposes; Fred Meyer Stores, Inc.; Notice of Revocation of Market-Based Rate Authority and Termination of Electric Market-Based Rate Tariff

On September 22, 2022, the Commission issued an order announcing its intent to revoke the market-based rate authority of the seller¹ captioned above that had failed to file its baseline submission to the market-based rate relational database,² as required by Order No. 860.³ The Commission directed that Fred Meyer Stores, Inc. (Fred Meyer Stores) file the required baseline submission within 15 days of the date of issuance of the September 22 Order or face revocation of its authority to sell power at market-based rates and termination of its electric market-based rate tariff.⁴ On October 14, 2022, Fred Meyer Stores was granted an extension of time to satisfy the Commission's requirements in Order No. 860, and the directives of the September 22 Order, up to and

¹ A "seller" is defined as any person that has authorization to or seeks authorization to engage in sales for resale of electric energy, capacity or ancillary services at market-based rates under section 205 of the Federal Power Act (FPA). 18 CFR 35.36(a)(1); 16 U.S.C. 824d. Each seller is a public utility under section 205 of the FPA. 16 U.S.C. 824.

² *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, 180 FERC ¶ 61,170 (2022) (September 22 Order).

³ *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes*, Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g*, Order No. 860–A, 170 FERC ¶ 61,129 (2020).

⁴ September 22 Order, 180 FERC ¶ 61,170 at Ordering Paragraph A.

including October 21, 2022.⁵ On October 28, 2022, Fred Meyer Stores was granted an additional extension of time to satisfy the Commission's requirements and directives up to and including November 21, 2022.⁶

The time period for compliance with the September 22 Order, the October 14 Extension, and the October 28 Extension has elapsed. Fred Meyer Stores failed to file its delinquent baseline submission to the market-based rate relational database. The Commission hereby revokes, effective as of the date of issuance of this notice, the market-based rate authority and terminates the electric market-based rate tariff of Fred Meyer Stores. This revocation does not preclude Fred Meyer Stores from re-applying for market-based rate authority.

Dated: March 28, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-06859 Filed 4-3-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23-1492-000]

Santa Paula Energy Storage, 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 Santa Paula Energy Storage, 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 April 18, 2023.

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 TTY, (202) 502-8659.

Dated: March 29, 2023.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2023-06982 Filed 4-3-23; 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: EC23-68-000.

Applicants: Weaver Wind, LLC, Weaver Wind Maine Master Tenant, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Weaver Wind, LLC, et al.

Filed Date: 3/27/23.

Accession Number: 20230327-5255.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: EC23-69-000.

Applicants: Chevelon Butte RE LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Chevelon Butte RE LLC.

Filed Date: 3/27/23.

Accession Number: 20230327-5259.

Comment Date: 5 p.m. ET 4/17/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23-109-000.

Applicants: Stanton Battery Energy Storage LLC.

Description: Stanton Battery Energy Storage LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/28/23.

Accession Number: 20230328-5097.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: EG23-110-000.

Applicants: Santa Paula Energy Storage, LLC.

Description: Santa Paula Energy Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/28/23.

Accession Number: 20230328-5130.

Comment Date: 5 p.m. ET 4/18/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-1233-001.

Applicants: ITC Midwest LLC.

Description: Tariff Amendment: Amended Concurrence IPL Amended Exhibits and Attachments (2023) to be effective 5/29/2023.

Filed Date: 3/27/23.

Accession Number: 20230327-5209.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: ER23-1477-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment—Replacement of Rate Schedule No. 278 with Service Agreement No. 910 to be effective 2/24/2023.

Filed Date: 3/27/23.

Accession Number: 20230327-5187.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: ER23-1478-000.

Applicants: Tri-State Generation and Transmission Association, Inc.

⁵ Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes, Notice of Extension of Time, Docket No. RM16-17-000 (Oct. 14, 2022) (October 14 Extension).

⁶ Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes, Notice of Extension of Time, Docket No. RM16-17-000 (Oct. 28, 2022) (October 28 Extension).

Description: Tariff Amendment: Notice of Cancellation of Rate Schedule FERC No. 278 to be effective 2/24/2023.

Filed Date: 3/27/23.

Accession Number: 20230327–5188.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: ER23–1479–000.

Applicants: Eversource Energy Service Company (as agent), ISO New England Inc.

Description: § 205(d) Rate Filing: Eversource Energy Service Company (as agent) submits tariff filing per 35.13(a)(2)(iii): ISO–NE and CL&P; Filing of First Revised LGIA–ISONE/CLP–22–01 to be effective 2/23/2023.

Filed Date: 3/27/23.

Accession Number: 20230327–5200.

Comment Date: 5 p.m. ET 4/17/23.

Docket Numbers: ER23–1479–001.

Applicants: Eversource Energy Service Company (as agent), ISO New England Inc.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): ISO–NE; Amendment of Pending Tariff Filing of First Rev. LGIA–ISO–NE/CLP–22–01 to be effective 2/23/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5057.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1480–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Attachment AE Section 2.2 Regarding Requirements of Resources to be effective 6/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5022.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1481–000.

Applicants: Public Service Company of New Hampshire.

Description: § 205(d) Rate Filing: New England Power Company—Design and Engineering Agreement to be effective 3/29/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5080.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1482–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2023–03–28 SA 3370 ATC–Red Barn Energy 2nd Rev GIA (J855) to be effective 3/20/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5107.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1483–000.

Applicants: The Connecticut Light and Power Company.

Description: Tariff Amendment: Cancellation of Study Work Agreement

with NY Independent System Operator, Inc. to be effective 3/29/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5123.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1484–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1976R12 FreeState Electric Cooperative, Inc. NITSA and NOA to be effective 3/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5125.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1485–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2023–03–28 Minimum State of Charge Extension Tariff Amendment to be effective 5/28/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5126.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1486–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023–03–28 TABGRID Info Study Amnd 1 730 to be effective 3/29/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5139.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1487–000.

Applicants: ITC Interconnection LLC.

Description: Tariff Amendment: Notice of Termination of Revised Facilities Reimbursement Agreement to be effective 6/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5142.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1488–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 607R44 Evergy Kansas Central, Inc. NITSA NOA to be effective 3/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5151.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1489–000.

Applicants: Wisconsin Public Service Corporation.

Description: § 205(d) Rate Filing: Annual Formula Rate Update for PEB and PBOP Changes to be effective 4/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5158.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1490–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: Revised DEF Rate Schedule No. 226 to be effective 6/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5180.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1491–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2023–03–28 TABGRID Info Study Amnd 1 731 to be effective 3/29/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5181.

Comment Date: 5 p.m. ET 4/18/23.

Docket Numbers: ER23–1492–000.

Applicants: Santa Paula Energy Storage, LLC.

Description: Baseline eTariff Filing: Santa Paula Energy Storage, LLC MBR Tariff to be effective 5/28/2023.

Filed Date: 3/28/23.

Accession Number: 20230328–5203.

Comment Date: 5 p.m. ET 4/18/23.

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: March 28, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–06854 Filed 4–3–23; 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 Waiver Period for Water Quality Certification Application

On August 22, 2022, Transcontinental Gas Pipe Line Company, LLC submitted to the Federal Energy Regulatory Commission a copy of its application for a Clean Water Act section 401(a)(1) water quality certification filed with the

Alabama Department of Environmental Management (ADEM), in conjunction with the above captioned project. Pursuant to 40 CFR 121.6 and section 157.22(b) of the Commission's regulations,¹ we hereby notify ADEM of the following:

Date of Receipt of the Certification Request: August 22, 2022.

Reasonable Period of Time to Act on the Certification Request: August 22, 2023.

If ADEM fails or refuses to act on the water quality certification request on or before the above date, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: March 28, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-06858 Filed 4-3-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-601-000.
Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (JBS Tolleson) to be effective 5/1/2023.

Filed Date: 3/28/23.

Accession Number: 20230328-5187.

Comment Date: 5 p.m. ET 4/10/23.

Docket Numbers: RP23-602-000.
Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TEP May 23) to be effective 5/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329-5067.

Comment Date: 5 p.m. ET 4/10/23.

Docket Numbers: RP23-603-000.
Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (TMV Apr 23) to be effective 4/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329-5081.

Comment Date: 5 p.m. ET 4/10/23.

Docket Numbers: RP23-604-000.
Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming NRA with FP&L to be effective 4/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329-5102.

Comment Date: 5 p.m. ET 4/10/23.

Docket Numbers: RP23-605-000.

Applicants: Trunkline Gas Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming List Update—FP&L to be effective 4/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329-5103.

Comment Date: 5 p.m. ET 4/10/23.

Docket Numbers: RP23-606-000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Apr 2023) to be effective 4/1/2023.

Filed Date: 3/29/23.

Accession Number: 20230329-5126.

Comment Date: 5 p.m. ET 4/10/23.

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: March 29, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023-06983 Filed 4-3-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2544-052]

Hydro Technology, Inc.; Notice of Application Accepted for Filing, Ready For Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, And Prescriptions

Take notice that the following license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P-2544-052.

c. *Date filed:* December 27, 2021.

d. *Applicant:* Hydro Technology, Inc.

e. *Name of Project:* Meyers Falls Hydroelectric Project (Project).

f. *Location:* The existing project is located on the Colville River near the city of Kettle Falls, Stevens County, Washington. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Benjamin Hendrickson, President, Hydro Technology Systems, Inc., 897 Greenwood Loop Rd., PO Box 245, Kettle Falls, WA 99141; Telephone (509) 933-7629.

i. *FERC Contact:* Maryam Zavareh, (202) 502-8474, maryam.zavareh@ferc.gov.

j. *Deadline for filing comments, recommendations, terms and conditions, and 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 comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FERC.aspx>.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/Quick.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P-2544-052.

The Commission's Rules of Practice require all intervenors filing documents

¹ 18 CFR 157.22(b) (2022).

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.

l. The existing Meyers Falls Project consists of: (1) a 10-acre reservoir; (2) a 24.5-foot-high, 306-foot-long, concrete and earth-fill embankment dam; (3) a 100-foot-long concrete spillway section containing five 20 feet, 3.5 inch wide, 6 feet high bulkheads; (4) a 46-foot-wide, 20-foot-deep, 360-foot-long intake channel with a 19-foot-wide and 11-foot-deep trashrack at the entrance point; (5) a 4-foot-diameter, 323-foot-long steel penstock conveying flow from intake to powerhouse; (6) a 31.5-foot-wide, 55.5-foot-long, 15.5-foot-high steel reinforced concrete powerhouse containing two generating units with a total installed capacity of 1.2 megawatts; (7) a 4,600-foot-long, 13.8-kilovolt transmission line; and (8) appurtenant facilities. The Meyers Falls Project is operated in a run-of-river mode with an average annual generation of 7,883 megawatt-hours per year.

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. For assistance, contact FERC Online Support.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "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 submitting the filing; 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. Each filing must be accompanied by proof of service on all persons listed on 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://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *The applicant must file no later than 60 days following the date of issuance of this notice either:* (1) evidence of the date on which the certifying agency received the certification request; (2) a copy of the water quality certification; 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 also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions: May 2023

Licensee's Reply to REA Comments: July 2023

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: March 28, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-06857 Filed 4-3-23; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0191; FRL-10804-01-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 *Citizens for Clean Air, et al. v. Michael S. Regan, et al.*, No.

2:22-cv-01382-RSL (W.D. Wa.). On September 28, 2022, Plaintiffs Citizens for Clean Air and Sierra Club filed a complaint in the United States District Court for the Western District of Washington alleging that the Environmental Protection Agency (EPA or the Agency) failed to perform a non-discretionary duty in accordance with the Act to take final action to approve, disapprove or conditionally approve, in whole or in part, a nonattainment state implementation plan (SIP) submission made by the State of Alaska. The State made the SIP submission at issue to address certain nonattainment area plan requirements for purposes of the 2006 24-hour PM_{2.5} national ambient air quality standards (NAAQS) for the Fairbanks North Star Borough area. The proposed consent decree would establish a deadline for EPA to take final action on the SIP submission.

DATES: Written comments on the proposed consent decree must be received by May 4, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0191, 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: Geoffrey L. Wilcox, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-5601; email address wilcox.geoffrey@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-2023-0191) 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 the Plaintiffs seeking to compel the EPA to take final action required by CAA section 110(k)(2)-(4) to approve, disapprove, or conditionally approve, in whole or in part, the State of Alaska's nonattainment plan SIP submission for the Fairbanks North Star Borough area for purposes of the 2006 24-hour PM_{2.5} NAAQS (the Fairbanks Plan). The State made the SIP submission at issue on December 15, 2020, to address Serious area nonattainment plan requirements, and Section 189(d) plan requirements, in the Fairbanks North Star Borough area. Under the terms of the proposed consent decree, EPA would be required to sign a notice or notices of final rulemaking to approve, disapprove, or conditionally approve, in whole or in part, the Fairbanks Plan pursuant to section 110(k)(2)-(4) of the CAA by no later than November 22, 2023. Thereafter, the EPA shall, within 15 business days, send the required signed notice or notices of final rulemaking to the Office of **Federal Register** for review and publication.

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-2023-0191, 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.

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. 2023-06887 Filed 4-3-23; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OMS-2021-0325; FRL-10864-01-OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Improving Customer Service

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Improving Customer Service (EPA ICR Number 2687.01, OMB Control Number 2030-NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed new ICR. Public comments were previously requested via the **Federal Register** on October 13, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

DATES: Comments may be submitted on or before May 4, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA-HQ-OMS-2021-0325, to EPA online using <https://www.regulations.gov> (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information

collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Augusto Cangahuala, Office of Customer Advocacy, Policy, and Portfolio Management, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–1646; email address: Cangahuala.Augusto@epa.gov.

SUPPLEMENTARY INFORMATION: This is a new ICR. An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on October 13, 2021, during a 60-day comment period (86 FR 56932). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration’s commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at <https://www.performance.gov/cx/a11-280.pdf>. As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. These results will be used to improve the

delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on www.performance.gov to help build transparency and accountability of Federal programs to the customers they serve. As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Environmental Protection Agency will only submit collections if they meet the following criteria.

- The collections are voluntary.
- The collections are low burden for respondents (based on total burden hours or burden-hours per respondent) and are low cost for respondents and the Federal Government.
- The collections are non-controversial and do not raise issues of concern to Federal agencies.
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future.
- Personally identifiable information (PII) is collected to the extent necessary and not retained.
- Information gathered is intended to be used for general service improvement and program management purposes.
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on [performance.gov](http://www.performance.gov). Summaries of customer research and user testing activities may be included in public-facing customer journey maps or summaries.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Form Numbers: None.

Respondents/affected entities:

Individuals and entities who have experience with the program or may have experience with the program in the near future.

Respondent’s obligation to respond: Voluntary.

Estimated number of respondents: 2,001,550 (total).

Frequency of response: On occasion.

Total estimated burden: 101,125 hours.

Estimated annual cost: There are no annualized capital/startup or operation & maintenance costs.

Changes in estimates: This is a new collection.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2023–06966 Filed 4–3–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0233, 3060–0804, 3060–0819, 3060–1126; FR ID 134448]

Information Collections 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 May 4, 2023.

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: 3060–0233.

Title: Part 54—Rate-of-Return Carrier Universal Service Reporting Requirements.

Form Number: FCC Form 507, FCC Form 508 and FCC Form 509.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and

Responses: 1,095 respondents; 4,044 responses.

Estimated Time per Response: 1–22 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 214, 218–220, 221(c), 254, and 303(r).

Total Annual Burden: 43,638 hours.

Total Annual Cost: No Cost.

Needs and Uses: In order to determine which carriers are entitled to universal service support, all rate-of-return regulated (rate-of-return) incumbent local exchange carriers (LECs) must provide the National Exchange Carrier Association (NECA) with the loop cost and loop count data required by section 54.1305 for each of its study areas and, if applicable, for each wire center as that term is defined in 47 CFR part 54. See 47 CFR 54.1305 and 54.5. The loop cost and loop count information is to be filed annually with NECA by July 31st of each year, and may be updated occasionally pursuant to section 54.1306. See 47 CFR 54.1306. Pursuant to section 54.1307, the information filed on July 31st of each year will be used to calculate universal service support for each study area and is filed by NECA with the Commission on October 1 of each year. See 47 CFR 54.1307. An incumbent LEC is defined as a carrier that meets the definition of “incumbent local exchange carrier” in section 51.5 of the Commission’s rules. See 47 CFR 51.5.

In March 2016, the Commission adopted the Rate-of-Return Reform Order to continue modernizing the universal service support mechanisms for rate-of-return carriers. The Rate-of-Return Reform Order replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the Rate-of-Return Reform Order to continue modernizing the universal service support mechanisms for rate-of-return carriers. The Rate-of-Return Reform Order replaced the Interstate Common Line

Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See 47 CFR 54.903(a).

In December 2018, the Commission adopted the December 2018 Rate-of-Return Reform Order to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (2018 Rate-of-Return Reform Order). See also 47 CFR 54.313(f)(5).

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program.

Form Numbers: FCC Forms 460, 461, 462, 463, 465, 466, and 467.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal governments.

Number of Respondents and Responses: 12,854 unique respondents; 102,681 responses.

Estimated Time per Response: 0.30–17 hours.

Frequency of Response: On occasion, One-time, Annual, and Monthly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 254, 303(r), and 403, unless otherwise noted.

Total Annual Burden: 413,460 hours.

Total Annual Cost: No Cost.

Needs and Uses: The Commission seeks OMB approval of an extension of this information collection, which is scheduled to expire on May 31, 2023. This collection is utilized for the RHC support mechanism of the Commission's universal service fund (USF). The collection of this information is necessary so that the Commission and the Universal Service Administrative Company (USAC) will have sufficient information to determine if entities are eligible for funding pursuant to the RHC universal service support mechanism, to determine if entities are complying with the Commission's rules, and to prevent waste, fraud, and abuse. This information is also necessary in order to allow the Commission to evaluate the extent to which the RHC Program is meeting the statutory objectives specified in section 254(h) of the 1996 Act, and the Commission's performance goals for the RHC Program.

The Healthcare Connect Fund Program currently includes FCC Forms 460, 461, 462, and 463 and the Telecom Program currently includes FCC Forms 465, 466, and 467. The information on the FCC Form templates is a representative description of the information to be collected via an online portal and is not intended to be a visual representation of what each applicant or service provider will see, the order in which they will see information, or the exact wording or directions used to collect the information. Where possible, information already provided by applicants from previous filing years or that was pre-filed in the system portal will be carried forward and auto-generated into the form to simplify the information collection for applicants.

OMB Control Number: 3060–0819.

Title: Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization,

Telecommunications Carriers Eligible for Universal Service Support.

Form No.: FCC Form 481, 497, 555, 5629, 5630, and 5631.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit enterprises.

Number of Respondents and Responses: 25,110,064 respondents; 26,877,404 responses.

Estimated Time per Response: 0.0167–125 hours.

Frequency of Response: Annual, biennial, monthly, daily and on occasion reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303⁹, and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302.

Total Annual Burden: 6,534,374 hours.

Total Annual Cost: \$937,500.

Needs and Uses: This revision implements several process and procedural changes made to reflect the full implementation of the National Verifier in all states and territories and updates several of the forms associated with this collection. These changes require minor modifications to the previously approved requirements. These changes have a moderate impact on the overall burden, increasing the burden hours for some requirements and decreasing the burden hours for other requirements.

OMB Control Number: 3060–1126.

Title: Testing and Logging Requirements for Wireless Emergency Alerts (WEA).

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 76 Participating CMS Providers; 429,020 Responses.

Estimated Time per Response: 0.000694 hours (2.5 seconds) to generate each alert log; 2 hours to respond to each request for alert log data or information about geo-targeting

Frequency of Response: Monthly and on occasion reporting requirements and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection

is contained in 47 U.S.C. 151, 152, 154(i) and (o), 301, 301(r), 303(v), 307, 309, 335, 403, 544(g), 606 and 615 of the Communications Act of 1934, as amended, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act.

Total Annual Burden: 119,021 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission adopted requirements for Participating CMS Providers to log the basic attributes of alerts they receive at their Alert Gateway, to maintain those logs for at least 12 months, to make those logs available upon request to the Commission and FEMA, and to emergency management agencies that offer confidentiality protection at least equal to that provided by federal FOIA. The Commission also requires Participating CMS Providers to disclose information regarding their capabilities for geo-targeting Alert Messages upon request to such emergency management agencies insofar as it would pertain to Alert Messages initiated by that emergency management agency. These recordkeeping and reporting requirements have potential to increase emergency managers' confidence that WEA will work as intended when needed. This increased confidence in system availability encourages emergency management agencies that do not currently use WEA to become authorized. These reporting and recordkeeping requirements also help to ensure a fundamental component of system integrity. Alert logs are necessary to establish a baseline for system integrity against which future iterations of WEA can be evaluated. Without records that can be used to describe the quality of system integrity, and the most common causes of message transmission failure, it would be difficult to evaluate how any changes to WEA may affect system integrity.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023–06940 Filed 4–3–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1133; FR ID 134467]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 5, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1133.

Title: Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308); 47 CFR 73.3545 and 73.3580.

Form No.: FCC Form 308.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 26 respondents; 70 responses.

Estimated Time per Response: 0.75 hours-1.5 hours.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 66 hours.

Annual Cost Burden: \$26,681.

Needs and Uses: The Federal Communications Commission ("Commission") is requesting that the Office of Management and Budget (OMB) approve a revision of OMB Control No. 3060-1133 titled, "Application for Permit to Deliver Programs to Foreign Broadcast Stations (FCC Form 308)—47 CFR 73.3545 and 73.3580."

The Commission has updated the International Bureau Filing System (IBFS) to allow for filing of electronic forms directly into the system through an integrated web-based program with fillable fields. The integrated web-based program requires the use of an FCC Registration Number (FRN) and includes support for Form 308. Applicants will be required to submit Form 308 through the integrated web-based program. Therefore, this information collection is being revised to reflect the new form format and the addition of a requirement to provide an FRN on the Form. See Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports, FCC 21-87, released on July 13, 2021.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2023-06941 Filed 4-3-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors.

This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than April 19, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl St., Dallas, Texas 75201. Comments can also be sent electronically to

Comments.applications@dal.frb.org:

1. *Dillon Scott Cecil and Randle Cecil Brooks, both of Paris, Texas*; to join the Cecil/Conger Family Control Group, a group acting in concert, to acquire voting shares of Paris Bancshares, Inc., and thereby indirectly acquire voting shares of The Liberty National Bank in Paris, both of Paris, Texas.

Board of Governors of the Federal Reserve System.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2023-06969 Filed 4-3-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10003 and CMS-10708]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing

collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by June 5, 2023.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10003 Notice of Denial of Medical Coverage (or Payment)
CMS-10708 Proposed Repetitive, Scheduled Non-Emergent Ambulance Transport (RSNAT) Prior

Authorization Process and Requirements for a Potential National Model

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title:* Notice of Denial of Medical Coverage (or Payment); *Use:* Section 1852(g)(1)(B) of the Social Security Act (the Act) requires Medicare health plans to provide enrollees with a written notice in understandable language of the reasons for the denial and a description of the applicable appeals processes.

Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the Notice of Denial of Medical Coverage (or Payment) (NDMCP) when a request for either a medical service or payment is denied, in whole or in part.

Additionally, the notices inform Medicare enrollees of their right to file an appeal, outlining the steps and timeframes for filing. All Medicare health plans are required to use these standardized notices. *Form Number:* CMS-10003 (OMB Control Number: 0938-0829); *Frequency:* Annually; *Affected Public:* Private sector, business or other for-profit and not-for-profit institutions; *Number of Respondents:* 937; *Number of Responses:* 16,191,812; *Total Annual Hours:* 2,697,556. (For policy questions regarding this collection contact Sabrina Edmonston at 410-786-3209.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Proposed Repetitive, Scheduled Non-Emergent Ambulance Transport (RSNAT) Prior Authorization Process and

Requirements for a Potential National Model; *Use:* Section 515(b) of MACRA (Pub. L. 114-10) added paragraph (16) to section 1834(l) of the Act, which requires that, beginning January 1, 2017, the Secretary expand the RSNAT Prior Authorization Model nationally to all states if model expansion meets certain statutory requirements for Innovation Center programs. These requirements are described in paragraphs (1) through (3) of section 1115A(c) of the Act: the Secretary determines that such expansion is expected to—reduce spending under applicable title without reducing the quality of care; or—(A) improve the quality of patient care without increasing spending; and (1) the Chief Actuary of the Centers for Medicare & Medicaid Services certifies that such expansion would reduce (or would not result in any increase in) net program spending under applicable titles; and (2) the Secretary determines that such expansion would not deny or limit the coverage or provision of benefits under the applicable title for applicable individuals.

Pursuant to the authority in section 515(b) of MACRA (Pub. L. 114-10), CMS is seeking to renew the necessary approval under the existing OMB approval for the collection of information to continue operating the RSNAT Prior Authorization Model. *Form Number:* CMS-10708 (OMB control number: 0938-1380); *Frequency:* Occasionally; *Affected Public:* Private Sector (business or other for-profits, not-for-profit institutions); *Number of Respondents:* 1,580; *Number of Responses:* 83,374; *Total Annual Hours:* 46,427. (For questions regarding this collection contact Angela Gaston at 410-786-7409.)

Dated: March 30, 2023.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023-06945 Filed 4-3-23; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS-10495 and CMS-10108]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 4, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786-4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section

3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Registration, Attestation, Dispute Resolution and Correction, Assumptions Document and Data Retention Requirements for Open Payments; *Use:* The Patient Protection and Affordable Care Act was enacted on March 23, 2010 (Pub. L. 111-148). This statute amended section 1128 of the Social Security Act (the Act) by adding a new subsection G that requires applicable manufacturers of drugs, devices, biologics, or medical supplies covered under title XVIII of the Act (Medicare) or a State plan under title XIX (Medicaid) or XXI of the Act (the Children's Health Insurance Program, or CHIP) to report annually to the Secretary certain payments or other transfers of value to physicians and teaching hospitals. Section 1128G of the Act also requires applicable manufacturers and applicable group purchasing organizations (GPOs) to report certain information regarding the ownership or investment interests held by physicians or the immediate family members of physicians in such entities, as well as any payments provided to such physicians. The submitted information facilitates various aspects of the program. The information collected through the registration process is used by CMS to validate registration for applicable manufacturers, applicable GPOs, covered recipients, and physician owners or investors that are registering for Open Payments. Details collected during the dispute resolution and correction process allows CMS to notify applicable manufacturers and applicable GPOs that a covered recipient or physician owner or investor is initiating a dispute regarding data submitted about them and allow CMS to relay the nature of the dispute. The assumptions documents submitted by applicable manufacturers or applicable GPOs assist CMS in providing guidance (for example, determining form and nature of payment categories, calculating the value of a payment, determining the date of payment, and

reporting the terms of an ownership or investment interest). *Form Number:* CMS-10495 (OMB control number: 0938-1237); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 1,612; *Total Annual Responses:* 1,612; *Total Annual Hours:* 1,920,534. For policy questions regarding this collection contact Kathleen Ott at 410-786-4246.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Managed Care and Supporting Regulations; *Use:* Information collected includes information about managed care programs, grievances and appeals, enrollment broker contracts, and managed care organizational capacity to provide health care services. Medicaid enrollees use the information collected and reported to make informed choices regarding health care, including how to access health care services and the grievance and appeal system. States use the information collected and reported as part of its contracting process with managed care entities, as well as its compliance oversight role. We use the information collected and reported in an oversight role of state Medicaid managed care programs.

Among the proposed changes, this iteration: (1) adds burden for a new submission process, via online portal, for states to submit contracts to CMS and to note an omission from prior packages for the burden for states to submit their managed care plan contracts via email, and (2) adds burden to provide a reporting template for those states that implemented COVID-19 specific risk mitigation strategies to their managed care plan contracts. This template will ensure that states provide consistent and complete reporting of the outcomes of these risk mitigation strategies. *Form Number:* CMS-10108 (OMB control number: 0938-0920); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions), and State, local or Tribal Government; *Number of Respondents:* 5,053; *Total Annual Responses:* 13,743,255; *Total Annual Hours:* 1,682,636. For policy questions regarding this collection contact Amy Gentile at 410-786-3499.

Dated: March 30, 2023.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023-06964 Filed 4-3-23; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Administration for Community Living****Administration on Disabilities, The President's Committee for People With Intellectual Disabilities****AGENCY:** Administration for Community Living, HHS.**ACTION:** Notice.

SUMMARY: The President's Committee for People with Intellectual Disabilities (PCPID) will hold a virtual meeting for members to discuss issues related to Home and Community Based Services (HCBS) that will be a part of the Committee's Report to the President. All the PCPID meetings, in any format, are open to the public. This virtual meeting will be conducted in a discussion and presentation format with testimony from people with intellectual disabilities and other stakeholders to provide more information about their experiences with HCBS.

DATES: May 1, 2023 from 12 p.m. to 5 p.m. (EST).

Agenda: The Committee will discuss emerging issues identified by four PCPID workgroups related to HCBS: Direct support professionals, competitive integrated employment, community living, and Federal support programs. This discussion will help develop a general framework for the preparation of the PCPID Report to the President.

Additional Information: For further information, please contact Mr. David Jones, Director, Office of Intellectual Developmental Disabilities, 330 C Street SW, Switzer Building, Room 1126, Washington, DC 20201. Telephone: 202-795-7367. Fax: 202-795-7334. Email: David.Jones@acl.hhs.gov.

SUPPLEMENTARY INFORMATION:

Stakeholder input is very important to the PCPID. Comments and suggestions, especially from people with intellectual disabilities, are welcomed. If there are comments related to HCBS or other areas that you would like to inform the PCPID, please share them through the following ACL.gov link: https://acl.gov/form/pcpid?j=1555178&sfmc_sub=191090082&l=6707-HTML&u=34777761&mid=515008575&jb=0.

Comments received by April 21st will be shared with the PCPID at the May 1st meeting.

Webinar/Conference Call: The virtual meeting is scheduled for Monday, May 1, 2023 from 12:00 p.m. to 5:00 p.m. (EST) and may end early if discussions are finished. The meeting is open to the

public and will be held through a zoom meeting platform. In order for members of the public to observe the proceedings, you must register in advance at the following link: https://www.zoomgov.com/webinar/register/WN_jjKOBx7ARW-EjJdzKgawWg.

Background Information on the Committee: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services, and supports for individuals with intellectual disabilities. The PCPID Charter stipulates that the Committee shall: (1) provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President and the Secretary of Health and Human Services to promote full participation of people with intellectual disabilities in their communities, such as: (A) expanding educational opportunities; (B) promoting housing opportunities; (C) expanding opportunities for competitive integrated employment; (D) improving accessible transportation options; (E) protecting rights and preventing abuse; and (F) increasing access to assistive and universally designed technologies; and (3) provide advice to the President and the Secretary of Health and Human Services to help advance racial equity and support for people with intellectual disabilities within underserved communities.

Dated: March 30, 2023.

Jill Jacobs,

Commissioner, Administration on Disabilities.

[FR Doc. 2023-06938 Filed 4-3-23; 8:45 am]

BILLING CODE 4154-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration**

[Docket No. FDA-2023-N-0917]

In-Home Disposal Systems for Opioid Analgesics; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information; establishment of a public docket.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to obtain information and comments that will assist the Agency in assessing whether in-home disposal products can be expected to meet the

public health goal of mitigating the risk of nonmedical use or overdose if the Agency were to require drug manufacturers to make in-home disposal products available to patients under a risk evaluation and mitigation strategy (REMS). The Agency would like information and comments on the issues to be discussed at the public workshop convened by the National Academies of Sciences, Engineering and Medicine's (NASEM's) Forum on Drug Discovery, Development, and Translation entitled "Defining and Evaluating In-Home Disposal Systems for Opioid Analgesics" on June 26 and 27, 2023.

DATES: Submit either electronic or written comments, data, or information by August 28, 2023.

ADDRESSES: You may submit data and comments as follows. Please note that late, untimely filed comments will not be considered. The docket will close on August 28, 2023. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 28, 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-2023-N-0917 for “In-Home Disposal Systems for Opioid Analgesics; Request for Information.” 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:

Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993-0002, 301-796-3137, Kimberly.Lehrfeld@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Nonmedical use,¹ accidental exposure, and overdose associated with prescription opioid analgesics remain a serious problem in the United States. Patients commonly report having unused opioid analgesics after treatment of acute pain, such as pain following surgical procedures (Refs. 1 and 2). Opioid analgesics prescribed to treat chronic pain conditions can also result in unused drugs. When not properly disposed, these opioid analgesics provide opportunities for nonmedical use, accidental exposure, and overdose. Accordingly, FDA’s efforts to address the opioid crisis include a focus on encouraging appropriate disposal of unused opioid analgesics (for additional information, see the **Federal Register** notice “Providing Mail-Back Envelopes and Education on Safe Disposal With Opioid Analgesics Dispensed in an Outpatient Setting; Establishment of a Public Docket; Request for Comments” (April 21, 2022, 87 FR 23869; Sec. I., Background (Docket No. FDA-2022-N-0165)). The Substance Use-Disorder Prevention That Promotes Opioid Recovery and Treatment for Patients and Communities Act (SUPPORT Act) (Pub. L. 115-271), signed into law on October 24, 2018, provides FDA authorities to address the opioid crisis. The SUPPORT Act authorized FDA to require through a REMS that a safe disposal packaging or safe disposal system be dispensed to certain patients with opioids or other drugs that pose a serious risk of abuse or overdose if, among other things, FDA determines that such safe disposal packaging or system may mitigate such risks and is sufficiently available (21 U.S.C. 355-1(e)(4)).

II. Topic for Public Input

This request for information is part of FDA’s ongoing efforts to determine

¹ We use the term “nonmedical” in this document to refer to misuse of a drug, abuse of a drug, or both. “Misuse” is the intentional use, for therapeutic purposes, of a drug in a manner other than prescribed. “Abuse” is the intentional, non-therapeutic use of a drug, even once, for its desirable psychological or physiological effects.

whether in-home disposal products can be expected to meet the public health goal of mitigating the risk of nonmedical use or overdose if the Agency were to require drug manufacturers to make these products available to patients under a REMS. On June 26 and 27, 2023, NASEM’s Forum on Drug Discovery, Development, and Translation will hold a public workshop entitled “Defining and Evaluating In-Home Disposal Systems for Opioid Analgesics.”

The purpose of the workshop is to provide an opportunity for stakeholders to examine in-home drug disposal systems, with a focus on removing unused opioid analgesics from the home. The workshop will feature invited presenters and discussions to explore the types of in-home drug disposal options, other than mail-back envelopes, which could be used to remove unused opioid analgesics from the home. This will include, among other things, a discussion of the scientific, behavioral, health equity, and policy considerations for assessing the safety, use, and effectiveness of in-home drug disposal options.

Workshop participants will address questions about the methods (e.g., sequestration, adsorption, absorption) used in in-home disposal options for rendering opioids unavailable for nonmedical use, assuming the in-home disposal product is used as intended. In addition, workshop participants will discuss approaches and methodologies needed to evaluate the safe and correct use of in-home drug disposal options in real-world settings. Finally, workshop participants will consider potential strategies for encouraging and assessing the development and use of in-home drug disposal options. Additional meeting information, including the briefing document, agenda, and presentations, will be made available at <https://www.nationalacademies.org/our-work/advancing-regulatory-science-for-defining-and-evaluating-in-home-safe-disposal-systems-a-workshop> closer to the workshop date. FDA is seeking information and comments on the topics discussed at this meeting.

III. References

The following references are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some references may be available at the website address, if listed. The references below are available for viewing only at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. FDA has verified the web addresses, as of the date this

document publishes in the **Federal Register**, but websites are subject to change over time.

1. Bicket, M.C., J.J. Long, P.J. Pronovost, et al., "Prescription Opioid Analgesics Commonly Unused After Surgery: A Systematic Review," *JAMA Surgery*, vol. 152(11), pp. 1066–1071, 2017, <https://doi.org/10.1001/jamasurg.2017.0831>.

2. Mallama, C.A., C.A. Greene, A.A. Alexandridis, et al., "Patient-Reported Opioid Analgesic Use After Discharge from Surgical Procedures: A Systematic Review," *Pain Medicine*, vol. 23(1), pp. 22–44, 2022, <https://doi.org/10.1093/pm/pnab244>.

Dated: March 24, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–06650 Filed 4–3–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; System of Records

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Notice of a new system of records, and rescindment of system of records notices.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is establishing a new department-wide system of records titled Personnel (Employee and Non-Employee) Recruitment Program Records Not Covered by Other Notices, system number 09–90–2301. HHS is also rescinding two related systems of records: OGC Attorney Applicant Files, system number 09–90–0066; and Fellowship Program and Guest Researcher Records, system number 09–20–0112.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is applicable April 4, 2023, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by May 4, 2023.

ADDRESSES: The public should submit written comments, by mail or email, to Beth Kramer, HHS Privacy Act Officer, 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or beth.kramer@hhs.gov. Comments received will be available for review at this location without redaction, unless otherwise advised by the commenter. To review comments in person, please contact

Beth Kramer at beth.kramer@hhs.gov or (202) 690–6941.

FOR FURTHER INFORMATION CONTACT:

General questions about the system of records should be submitted by mail, email, or phone to Beth Kramer, HHS Privacy Act Officer, 200 Independence Ave. SW, Suite 729H, Washington, DC 20201, or beth.kramer@hhs.gov, or (202) 690–6941.

SUPPLEMENTARY INFORMATION:

I. Background on New System of Records 09–90–2301

This new department-wide system of records will cover (1) recruitment and related records about individuals recruited or identified for possible recruitment for fellowship and other non-employee positions at HHS, including those who become applicants and those who do not become applicants; and (2) recruitment records about individuals recruited or identified for possible recruitment for employee positions at HHS who do not become applicants. Recruitment records about individuals who apply for employee positions at HHS are excluded, because they are covered by other system of records notices (SORNs); specifically:

- Records about Public Health Service Commissioned Corps applicants are covered by 09–40–0001 Public Health Service (PHS) Commissioned Corps General Personnel Records; and
- Records about applicants for other HHS positions are covered by OPM/GOVT–5 Recruiting, Examining, and Placement Records (however, OPM/GOVT–5 does not include records about non-applicant recruits and recruitment candidates).

Only records for recruitment programs that retrieve records by subject individuals' names or other personal identifiers constitute Privacy Act records and are covered by the new system of records. Currently, only HHS' National Institutes of Health (NIH) and Centers for Disease Control and Prevention (CDC) maintain recruitment program records that need to be covered by the new system of records. A report on the new system of records was sent to the Office of Management and Budget (OMB) and the two Congressional committees that oversee privacy, in accordance with 5 U.S.C. 552a(r).

II. Rescindment of Systems of Records 09–90–0066 and 09–20–0112

HHS is rescinding two related System of Records Notices (SORNs):

- HHS is rescinding HHS Office of the General Counsel SORN 09–90–0066, titled OGC Attorney Applicant Files, as

duplicative of OPM/GOVT–5. SORN 09–90–0066 includes only records about individuals who have applied for an employment position with the HHS Office of General Counsel (OGC), and those records are entirely within the scope of OPM/GOVT–5. The records covered by SORN 09–90–0066 are still maintained by OGC, but will now be covered only by OPM/GOVT–5.

- HHS is rescinding Centers for Disease Control and Prevention SORN 09–20–0012, titled Fellowship Program and Guest Researcher Records, HHS/CDC/PMO, as replaced by and duplicative of new department-wide SORN 09–90–2301. SORN 09–20–0012 includes only records used to recruit individuals for nonemployee positions, so those records are entirely within the scope of new SORN 09–90–2301.

Dated: March 27, 2023.

Alfred C. Johnson,

Deputy Director for Management, National Institutes of Health.

SYSTEM NAME AND NUMBER:

Personnel (Employee and Non-Employee) Recruitment Program Records Not Covered by Other Notices, 09–90–2301.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of each agency component responsible for this system of records is as shown in the System Manager(s) section below.

SYSTEM MANAGER(S):

The system managers are as follows:

- *For National Institutes of Health (NIH) records:* NIH Chief Officer for Scientific Workforce Diversity, 1 Center Dr., Bldg. 1, Rm. 316, Bethesda, MD 20892; Telephone: (301) 451–4296.
- *For Centers for Disease Control and Prevention (CDC) records:* Deputy Director, Division of Scientific Education and Professional Development, Mail Stop V24–5, Centers for Disease Control and Prevention, 1600 Clifton Rd. NE, Atlanta, GA 30333; Email: fellowships@cdc.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 2301(b)(1), 3301 *et seq.*; 42 U.S.C. 209(g) and (h), 241, 247b–8, and 284(b).

PURPOSE(S) OF THE SYSTEM:

Records about individuals recruited or considered for recruitment for employee positions at HHS are used to fulfill particular candidate sourcing requests directed at meeting specific HHS workforce recruiting goals and to respond to reporting requests.

Records about recruitment candidates, recruits, and applicants for non-employee positions at HHS are used to administer fellowship, guest researcher, internship, and similar programs, the goals of which vary by program. The goals may include increasing students' interest in particular health professions and providing them with real world experience; providing early career individuals with leadership skills and professional development opportunities in specific health areas such as cultural competency, to help address underrepresentation of minorities in health care management and leadership positions; or enabling guest researchers or visiting scientists from universities and organizations to work collaboratively with HHS personnel on projects of mutual interest and benefit to HHS and to them.

To fulfill current and future candidate sourcing requests, data is collected (primarily, by searching publicly available data sources or retained, previously-received applications and recommendation materials) and aggregated into a searchable list about individuals identified as potential candidates to recruit for specific positions advertised in HHS job announcements. The resulting list is then made available to search committees to use to recruit applicants for those positions; *i.e.*, to encourage individuals on the list to apply for the position(s) sought to be filled.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about the following categories of individuals:

- Individuals who HHS recruits or identifies for possible recruitment for employee positions at HHS but who do not become applicants.
- Individuals who apply, or are recruited or identified for possible recruitment, for fellowship, guest researcher, internship, or other non-employee positions at HHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records about individuals recruited for fellowship and other non-employment positions include recruitment records, and may also include application, selection, and award and placement records. Records about individuals recruited for employment positions, who do not become applicants, consist of recruitment records only.

Recruitment records consist of a searchable list or spreadsheet of candidates containing data elements such as the following about each candidate: first and last name; gender

and race/ethnicity; contact information (email address, telephone number, mailing address); LinkedIn page; faculty page; current institution and position title(s) (general and detailed titles); degree type, year, and school; area(s) of expertise, research focus, specialization, or interest; grant or other funding award history; publication record (citations, citing articles, citations per publication); and other notes/comments.

Application records may include a completed application, request for appointment, resume or curriculum vitae, and letter(s) of recommendation containing data elements such as those listed above about each applicant.

Selection and placement records include internal memoranda and forms used to vet and make decisions on applications; notices to selectees and agreements with selectees; and onboarding documents (including, for foreign nationals, immigration and work authorization records).

RECORD SOURCE CATEGORIES:

Most information about recruitment candidates and recruits is obtained from public data sources, such as Yahoo, Bing, Google, Google scholar, Web of Science, PubMed, iCite, LinkedIn, ResearchGate, Loop, Elsevier, Academia, NIH RePORTER, and institutional websites (*e.g.*, websites of universities and societies or other organizations; personnel or faculty websites; lab websites). A list of recruitment candidates may include information from retained, previously received applications and recommendation materials, or may include no information obtained directly from the individual record subject. The applicant and the applicant's references are the sources of information in application records. Agency personnel are the source of information in internal selection and placement records, and agency personnel and the applicant are the source of information in the agreement and onboarding documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information about a subject individual may be disclosed from this system of records to parties outside HHS without the individual's prior, written consent, for any of these routine uses:

1. Disclosures tailored to particular positions may be made to relevant external search committees for use in outreach, but would be limited to publicly available information about individuals.
2. Disclosures, such as of sample printouts, may be made to various

scientific societies in the course of collaborating to develop an external facing system (such as, to share the protocol and key fields for data collection), but would be limited to publicly available information about individuals.

3. Disclosures limited to publicly available information about individuals may be made to external search committee chairs at universities for their outreach efforts to enhance the diversity of their applicant pools.

4. Disclosures may be made to other federal agencies and HHS contractors that have been engaged by HHS to assist in accomplishing an HHS function relating to the purposes of this system of records (including ancillary functions, such as compiling reports and evaluating program effectiveness) and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act.

5. Information may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other tribunal in litigation or other proceedings, when:

- a. The agency or any component thereof, or
- b. Any employee of the agency in his or her official capacity, or
- c. Any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee, or
- d. The United States Government, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

6. Information may be disclosed to a member of Congress or a congressional staff member in response to a written inquiry of the congressional office made at the written request of the constituent about whom the record is maintained. The congressional office does not have any greater authority to obtain records than the individual would have if requesting the records directly.

7. HHS may disclose records from this system of records to the National Archives and Records Administration (NARA), General Services Administration (GSA), or other relevant Federal Government agencies in connection with records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

8. Disclosure may be made to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is

a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Disclosure may be made to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

HHS may also disclose information about a recruitment candidate or recruit from this system of records to parties outside HHS, without the individual's prior written consent, for any of the purposes authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(2) and (b)(4)–(11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic form, on secure servers whenever feasible, or on approved portable/mobile devices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

- *Recruitment records for employment positions (about individuals who do not become applicants):* Retention and disposal will follow General Records Schedule 2.1, item 051 (job vacancy case files), DAA–GRS–2017–0011–0002 (records of standing register competitive files for multiple positions filled over a period of time), which provides for records to be destroyed two years after the register of candidates is terminated.

- *Recruitment records for non-employment positions:*
 - NIH recruitment records are disposed of in accordance with DAA–0443–2020–0001 (non-employee fellowship records) and DAA–0443–2020–0002 (immigration and work authorization records for foreign nationals), which provide for records to be destroyed three years after completion of fellowship, termination of

agreement, or non-acceptance of application, but state that the records may be retained longer if required for business use.

- CDC recruitment records are currently unscheduled and must be retained indefinitely until authorized for destruction under a disposition schedule approved by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are safeguarded in accordance with applicable laws, rules, and policies, including the HHS Information Technology Security Program Handbook, pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information as a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. Safeguards conform to the HHS Information Security and Privacy Program, <https://www.hhs.gov/about/agencies/asa/ocio/cybersecurity/information-security-privacy-program/index.html>.

Electronically stored information is protected by encryption, firewalls, and intrusion detection systems, to which access is controlled by either password protection or two-factor authentication. Files that NIH shares with subject individuals by email are also password protected and are shared only by using a secure email service, such as Secure Email and File Transfer (SEFT). If a printout or other paper records is created, it is stored in a locked cabinet or placed in a confidential, secured paper shredder cabinet when not in use and during non-business hours. Agency staff who use the records, and any contractor staff assisting them, are required to complete annual privacy and security awareness training. Security controls are reviewed on a periodic basis.

RECORD ACCESS PROCEDURES:

Individuals may request access to records about them in this system of records by submitting a written access request to the relevant System Manager at the address specified in the "System Manager" section, above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must contain the requester's full name, address, and signature, and a description of the requested records (including the approximate date(s) the information was collected, the type(s) of information collected, and the office(s)

or official(s) responsible for the collection of information, if known). To verify the requester's identity, the signature must be notarized or the request must include the requester's written certification that the requester is the individual he or she claims to be and understands that the knowing and willful request of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to \$5,000. To access the records in person, the requester should request an appointment, and may be accompanied by a person of the requester's choosing if the requester provides written authorization for agency personnel to discuss the records in that person's presence. Individuals may also request an accounting of disclosures that have been made of records about them.

CONTESTING RECORD PROCEDURES:

Individuals may seek to amend records about them in this system of records by submitting a written amendment request to the relevant System Manager at the address specified in the "System Manager" section, above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must include verification of the requester's identity in the same manner required for an access request. The request must reasonably identify the record(s) and specify the information being contested, the corrective action sought, and the reason(s) for requesting the correction, and include any supporting documentation. The right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

Individuals who wish to know if this system of records contains a record about them should submit a written notification request to the relevant System Manager at the address specified in the "System Manager" section above, in accordance with the Department's Privacy Act implementation regulations in 45 CFR. The request must provide the information described under "Record Access Procedure" and include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Notice of Rescindment

For the reasons explained in the Supplementary Information section at II., the following systems of records are rescinded:

SYSTEM NAME AND NUMBER:

OGC Attorney Applicant Files, 09–90–0066.

HISTORY:

47 FR 45514 (Oct. 13, 1982); 59 FR 55845 (Nov. 9, 1994); 83 FR 6591 (Feb. 14, 2018).

SYSTEM NAME AND NUMBER:

Fellowship Program and Guest Researcher Records, 09–20–0112.

HISTORY:

51 FR 42449 (Nov. 24, 1986); 54 FR 47904 (Nov. 17, 1989); 56 FR 1324 (Jan. 11, 1991); 56 FR 66733 (Dec. 24, 1991); 57 FR 62811 (Dec. 31, 1992); 58 FR 69048 (Dec. 29, 1993); 59 FR 48331 (Sept. 7, 1994); 59 FR 67080 (Dec. 28, 1994); 76 FR 4451 (Jan. 25, 2011); 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2023–06900 Filed 4–3–23; 8:45 am]

BILLING CODE P**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Substance Abuse and Mental Health Services Administration****Solicitation of Nominations for Organizations To Serve as Non-Voting Liaison Representatives to the Advisory Committee on Women's Services (ACWS) Subcommittee on Maternal Mental Health**

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) within the Department of Health and Human Services (HHS), is soliciting nominations from qualified organizations to be considered for non-voting liaison representative positions on a subcommittee of the Advisory Committee for Women's Services (ACWS) focused on maternal mental health. The ACWS subcommittee will consist of 5 non-voting liaison representatives who are nominated by their organizations to serve as the representatives of their organizations and selected by the ACWS DFO. The ACWS's role is to advise the Associate Administrator for Women's Services (AAWS) on appropriate activities to be

undertaken by the agencies of the Administration with respect to women's substance use and mental health services, including services which require a multidisciplinary approach. These may include discussion on the development of policies and programs regarding women's issues; plans to standardize and enhance the collection of data on women's health, and other emerging issues concerning women's substance use and mental health services. In particular, this subcommittee will focus on maternal mental health issues (which includes substance use) including prevention, screening, diagnosis, treatment, equity and community-based interventions.

DATES: Nominations must be received no later than 5 p.m. ET on April 10, 2023, at the address listed below.

ADDRESSES: All nominations should be sent to Valerie Kolick, Designated Federal Officer, Advisory Committee on Women's Services, SAMHSA, Substance Abuse and Mental Health Services Administration, 5600 Fishers Ln., Rockville, MD 20857. Nomination materials, including attachments, may be submitted electronically to valerie.kolick@samhsa.hhs.gov.

FOR FURTHER INFORMATION CONTACT:

Valerie Kolick, Designated Federal Officer, Advisory Committee on Women's Services, SAMHSA, Substance Abuse and Mental Health Services Administration, 5600 Fishers Ln., Rockville, MD 20857. Telephone number (240) 276–1738. Inquiries can be sent to valerie.kolick@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: These five non-voting liaison representative positions will be occupied by individuals who are nominated by their organizations to serve as representatives of organizations concerned with maternal mental health. Organizations will be designated to occupy the positions for a two-year term to commence during the 2023 calendar year. Nominations of qualified organizations are being sought for these five non-voting liaison representative positions. The organizations chosen for representation on ACWS subcommittee will be selected by the Designated Federal Officer (DFO) or designee during the 2023 calendar year. Details of nomination requirements are provided below.

The purpose of the ACWS is to advise the Associate Administrator for Women's Services (AAWS) on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance abuse and mental health services,

including services which require a multidisciplinary approach. These may include discussion on the development of policies and programs regarding women's issues; plans to standardize and enhance the collection of data on women's health, and other emerging issues concerning women's substance abuse and mental health services.

Management and support services for Committee activities are provided by staff from the HHS SAMHSA. The ACWS charter is available at <https://www.samhsa.gov/about-us/advisory-councils/acws/committee-charter>. ACWS meetings are held not less than two times per year. The ACWS shall consist of not more than ten (10) members to be appointed by the Assistant Secretary of SAMHSA, a majority of whom shall be women, who are not officers or employees of the Federal Government. Members shall be from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance use and mental health conditions.

Subcommittees of the ACWS may be established with the approval of the Assistant Secretary or the AAWS. The advice/recommendations of a subcommittee must be deliberated by the parent committee. A subcommittee may not provide advice or work products directly to the agency. The Department Committee Management Officer will be notified upon the establishment of each subcommittee and will be provided information on its name, membership, function, and estimated frequency of meetings.

Nominations

SAMHSA is requesting nominations of organizations to fill five non-voting liaison representative positions for the ACWS Subcommittee on maternal mental health. The organizations for representation will be selected by the DFO or designee during the 2023 calendar year.

Selection of organizations that will serve as non-voting liaison representatives will be based on the organization's qualifications to contribute to the accomplishment of the ACWS mission, as described in the Committee charter. In selecting organizations to be considered for these positions, SAMHSA will give close attention to equitable geographic distribution and give priority to U.S.-chartered 501(c)(3) organizations that operate within the United States and have membership with demonstrated expertise in maternal mental health and

related research, clinical services, or advocacy and outreach on issues concerning maternal mental health.

Organizations that currently have non-voting liaison representatives serving on ACWS are also eligible for nomination or to nominate themselves for consideration.

The individual designated by the selected organization to serve as the official liaison representative will perform the associated duties without compensation, and will not receive per diem or reimbursement for travel expenses. The organizations that are selected will cover expenses for their designated representative to attend, at a minimum, one in-person ACWS meeting per year during the designated term of appointment.

To qualify for consideration of selection to the Committee, an organization should submit the following items:

(1) A statement of the organization's history, mission, and focus, including information that demonstrates the organization's experience and expertise in maternal mental health and related research, clinical services, or advocacy and outreach on issues of maternal mental health, as well as expert knowledge of the broad issues and topics pertinent to maternal mental health. This information should demonstrate the organization's proven ability to work and communicate with the maternal mental health patient and advocacy community, and other public/private organizations concerned with maternal mental health, including public health agencies at the federal, state, and local levels.

(2) Two to four letters of recommendation that clearly state why the organization is qualified to serve on the ACWS subcommittee on maternal mental health in a non-voting liaison representative position. These letters should be from individuals who are not part of the organization.

(3) A statement that the organization is willing to serve as a non-voting liaison representative of the Subcommittee and will cover expenses for their representative to attend in-person, at a minimum, one ACWS meeting per year in Rockville, MD during the designated term of appointment.

(4) A current financial disclosure statement (or annual report) demonstrating the organization's ability to cover expenses for its selected representative to attend, at a minimum, one ACWS subcommittee meeting per year in Rockville, MD, during the term of appointment.

Submitted nominations must include these critical elements in order for the

organization to be considered for one of the liaison representative positions.

Nomination materials should be typewritten, using a 12-point font and double-spaced. All nomination materials should be submitted (postmarked or received) by April 12, 2023.

Electronic submissions: Nomination materials, including attachments, may be submitted electronically to valerie.kolick@samhsa.hhs.gov. Telephone and facsimile submissions cannot be accepted.

Regular, Express or Overnight Mail: Written documents may be submitted to the following addressee only: Valerie Kolick, Designated Federal Officer, ACWS, SAMHSA, Department of Health and Human Services, 200 Independence Avenue SW, Room 728F.3, Washington, DC 20201.

HHS makes every effort to ensure that the membership of federal advisory committees is fairly balanced in terms of points of view represented. Every effort is made to ensure that a broad representation of geographic areas, sex, ethnic and minority groups, and people with disabilities are given consideration for membership on federal advisory committees. Selection of the represented organizations shall be made without discrimination against the composition of an organization's membership on the basis of age, sex, race, ethnicity, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Authority: The Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS) is required by 42 U.S.C. 290aa; section 501(f)(2)(C) of the Public Health Service Act, as amended. The ACWS is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. ch. 10.

Dated: March 29, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023-06929 Filed 4-3-23; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration National Advisory Council; Correction

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Substance Abuse and Mental Health Services Administration published a document in the **Federal Register** of March 24, 2023, announcing the meeting of the SAMHSA National Advisory Council of April 27, 2023. The document contained incorrect date in the "DATES" section.

FOR FURTHER INFORMATION CONTACT:

Carlos Castillo, carlos.castillo@samhsa.hhs.gov. Telephone number (240) 276-2787.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 24, 2023, in FR Doc. 2023-06153, on page 17863, in the second column, correct the "DATES" caption to read:

DATES: April 27, 2023, 10:00 a.m. to approximately 3:15 p.m. EDT, Open.

Dated: March 29, 2023.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2023-06872 Filed 4-3-23; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2010-0164]

National Boating Safety Advisory Committee; May 2023 Meetings

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The National Boating Safety Advisory Committee (Committee) will conduct a series of meetings over three days in Annapolis, MD to discuss matters relating to recreational boating safety. The meetings will be open to the public via a virtual platform. There is also limited in-person access.

DATES:

Meetings: The National Boating Safety Advisory Committee will meet on Wednesday, May 10, 2023, from 3:30 p.m. until 5 p.m., Eastern Daylight Time (EDT), Thursday, May 11, 2023, from 8 a.m. until 4:30 p.m. (EDT) and on Friday, May 12, 2023, from 8 a.m. until 12 p.m. (EDT). The Boats and Associated Equipment, Prevention Through People and Strategic Planning Subcommittees will meet on Wednesday May 10, 2023, from 12:30 p.m. until 3:15 p.m. (open to public). Please note these meetings may adjourn early if the Committee has completed its business.

Comments and supporting documentation: To ensure your comments are received by Committee members before the meeting, submit your written comments no later than May 3, 2023.

ADDRESSES: The meeting will be held at the American Boat and Yacht Council at 613 Third Street, Suite 10, Annapolis, MD 21403 (www.abycinc.org).

Pre-registration information: Pre-registration is required for in-person access to the meeting, and for any attending via virtual. In-person attendance to the meeting will be limited to the first 50 registrants, with priority for members of the Committee and U.S. Coast Guard support staff to the Committee. If you are not a member of the Committee and/or U.S. Coast Guard support staff to the Committee, you must request in-person attendance by contacting the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. You will receive a response noting if you are able to attend in-person or if the in-person roster is full. Additionally, the NBSAC mailing list will receive a notification when the in-person attendance roster is full.

Teleconference lines and live virtual document sharing will be available for the full meeting of the Committee.

The National Boating Safety Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Jeff Decker at NBSAC@uscg.mil or call 202-372-1507 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comments before the meeting, please submit your comments no later than May 3, 2023. We are particularly interested in comments on the topics in the “Agenda” section below. We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, email the individual in the **FOR FURTHER**

INFORMATION CONTACT section of this document for alternate instructions. You must include the docket number [USCG-2010-0164]. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to view the Privacy and Security Notice available on <https://www.regulations.gov>. For more about

the Privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Decker, Alternate Designated Federal Officer of the National Boating Safety Advisory Committee, telephone 202-372-1507 or email NBSAC@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act*, (Pub. L. 117-286, 5 U.S.C., ch. 10). The National Boating Safety Advisory Committee is authorized by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018* and is codified in 46 U.S.C. 15105. The Committee operates under the provisions of the *Federal Advisory Committee Act* and 46 U.S.C. 15109. The National Boating Safety Advisory Committee provides advice and recommendations to the Secretary of Homeland Security through the Commandant of the U.S. Coast Guard on matters relating to recreational vessels and associated equipment and on other safety matters related to recreational vessels.

Agenda

The agenda for the National Boating Safety Advisory Committee meeting is as follows:

Day 1

Wednesday, May 10, 2023

Subcommittee Meetings

(1) Boats and Associated Equipment Subcommittee—Discussion of Task Statement 2022-01.

(2) Strategic Planning Subcommittee—Discussion of Task Statement 2022-02.

(3) Prevention through People Subcommittee—Discussion of Task Statement 2022-03.

Full Committee Meeting

(1) Call to order.
(2) Roll call of Committee members and determination of quorum.

(3) Opening remarks.
(4) Swearing in of new members.
(5) Approval of Committee 5 meeting minutes.
(6) Public comment period.
(7) Meeting recess.

Day 2

Thursday, May 11, 2023

The full Committee will resume meeting.

(1) Call to order.
(2) Report of the Boating Safety Division.
(a) Status of National Recreational Boating Safety Survey.
(b) Status of U.S. Coast Guard Mobile Application.
(c) Proposed Calendar for future Committee meetings.
(d) Incident Reporting Gap Analysis.
(e) Common Deficiencies during Boat Inspections and Tests.
(f) Incident Rates in States with Licenses.
(g) Preemption Letter to States on ECOS and Fire Protection.
(h) Certificate of Number Fee Policy Update.
(i) Recreational Incident Reporting Policy Update.
(j) eFoil and Jetboard Compliance Update.
(k) Notice of Funding Opportunity for Nonprofit Organization Grant Program.
(l) Estimated Allocation for State Grant Program.
(m) Restricted Operator of Uninspected Passenger Vessel Credential Policy Update.
(n) National RBS Program Instruction Update.
(o) Regulatory Update.
(3) Right Whale Protection Rule Update.
(4) RBS Program Communications Plan Development.
(5) HIN Policy Update.
(6) 2022–2026 National RBS Program Strategic Plan Update.
(7) State of Principal Use for CON Issuance Update.
(8) Breakout sessions for Subcommittees.
(9) Public comment period.
(10) Meeting recess.

Day 3

Friday, May 12, 2023

The full Committee will resume meeting.

(1) Call to order.
(2) Report from Strategic Planning Subcommittee to the full Committee.
(3) Report from Prevention through People Subcommittee to the full Committee.
(4) Report from the Boats and Associated Equipment Subcommittee to the full Committee.

(5) Discussion of Subcommittee recommendations and Committee Actions.

(6) Full Committee Open Discussion of Boating Safety Related Topics.

(7) Public comment period.

(8) Voting on any recommendations to be made to the U.S. Coast Guard.

(9) Administration.

(10) Closing remarks.

(11) Adjournment of meeting.

A copy of all meeting documentation will be available at <https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=75937&Source=/Lists/Content/DispForm.aspx?ID=75937> by May 3, 2023. Alternatively, you may contact Mr. Jeff Decker as noted in the **FOR FURTHER INFORMATION** section above.

During the May 10 and May 11, 2023 meetings, a public comment period will be held from approximately 4:00 p.m.–4:15 p.m. (EDT). Public comments will be limited to three minutes per speaker. Please note that the public comment periods will end following the last call for comments. Please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section, to register as a speaker.

Dated: March 30, 2023.

Amy M. Beach,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2023–06932 Filed 4–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0350; Control No. 1625–0041]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing the sixty-day notice for the Information Collection Request (ICR) regarding Office of Management and Budget (OMB) control number 1625–0041, for Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates. The Coast Guard published a notice of ICR in the **Federal Register** on November 29, 2022, titled “Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0041”. We are withdrawing that notice because it is a duplicate submission of the subsequent sixty-day notice and request for public comment associated with this

ICR that we published in the **Federal Register** on January 31, 2023.

DATES: The sixty-day notice published on November 29, 2022 (87 FR 73316) is withdrawn on April 4, 2023.

ADDRESSES: The notices discussed in this document are available at the Federal eRulemaking Portal at <https://www.regulations.gov>. The notice published on November 29, 2022 (87 FR 73316) is available in docket USCG–2022–0350. The subsequent duplicate ICR notice and supporting materials that Coast Guard will use going forward for this OMB approval are located in docket USCG–2023–0094.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, email Albert.L.Craig@uscg.mil, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION: On November 29, 2022, the Coast Guard published a sixty-day notice in the **Federal Register** (87) for the ICR entitled “1625–0041, Various International Agreement Pollution Prevention Certificates and Documents, and Equivalency Certificates. The intent of the notice was to request an extension of an existing collection of information without change. The Coast Guard is withdrawing the sixty-day notice published on November 29, 2022 (87 FR 73316), due to an administrative oversight which resulted in duplicate submissions. The sixty-day notice associated with this ICR titled “Information Collection Request to Office of Management and Budget” that subsequently published in the **Federal Register** on January 31, 2023 (88 FR 6291), remains in effect for public comment. The Coast Guard will use the docket related to the second publication, docket USCG–2023–0094, going forward for actions related to this ICR extension request.

This notice is issued under the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended, 33 U.S.C. 1901–1911.

Dated: March 30, 2023.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023–06960 Filed 4–3–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2023–0002; Internal Agency Docket No. FEMA–B–2323]

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 July 3, 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–2323, 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.")

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Marquette County, Michigan (All Jurisdictions)	
Project: 15-05-1490S Revised Preliminary Date: January 20, 2023	
Charter Township of Chocolay	Chocolay Charter Township Hall, 5010 US Highway 41 South, Marquette, MI 49855.
Morrison County, Minnesota and Incorporated Areas	
Project: 17-05-1793S Preliminary Date: November 03, 2022	
City of Bowlus	City Hall, 212 Main Street, Bowlus, MN 56314.
City of Buckman	Buckman City Hall, 27031 Park Street, Pierz, MN 56364.
City of Elmdale	Elmdale Community Center, 8197 State Highway 238, Bowlus, MN 56314.
City of Genola	Genola City Office, 13883 Highway 25, Pierz, MN 56364.
City of Harding	Harding Community Center, 24599 Quest Road, Pierz, MN 56364.
City of Lastrup	City Hall, 19201 285th Avenue, Lastrup, MN 56344.
City of Little Falls	City Hall, 100 Northeast 7th Avenue, Little Falls, MN 56345.
City of Motley	City Hall, 316 Highway 10 South, Motley, MN 56466.
City of Pierz	City Hall, 101 Main Street South, Pierz, MN 56364.
City of Randall	City Hall, 525 Pacific Avenue, Randall, MN 56475.
City of Royalton	City Hall, 12 North Birch Street, Royalton, MN 56373.
City of Sobieski	Sobieski Community Center, 9092 Cable Road, Little Falls, MN 56345.
City of Swanville	City Hall, 305 DeGraff Avenue, Swanville, MN 56382.
City of Upsala	City Hall, 320 Walnut Avenue, Upsala, MN 56384.
Unincorporated Areas of Morrison County	Morrison County Government Center, 213 1st Avenue Southeast, Little Falls, MN 56345.
Hardin County, Ohio and Incorporated Areas	
Project: 17-05-1800S Preliminary Date: April 29, 2022	
City of Kenton	City Building, 111 West Franklin Street, Kenton, OH 43326.
Unincorporated Areas of Hardin County	Hardin County Courthouse, Tax Map Department, One Courthouse Square, Suite 150, Kenton, OH 43326.
Village of Ada	Municipal Building, 115 West Buckeye Avenue, Ada, OH 45810.
Village of Alger	Village Office, 207 Angle Street, Alger, OH 45812.
Village of McGuffey	Municipal Building, 404 Courtright Street, McGuffey, OH 45859.

Community	Community map repository address
Powhatan County, Virginia (All Jurisdictions) Project: 20–03–0029S Preliminary Date: May 24, 2022	
Unincorporated Areas of Powhatan County	Powhatan County Administration Building, 3834 Old Buckingham Road, Suite F, Powhatan, VA 23139.
Prince William County, Virginia and Incorporated Areas Project: 14–03–3327S Preliminary Date: August 24, 2022	
City of Manassas	Public Works Building, Engineering Department, 8500 Public Works Drive, Manassas, VA 20110.
City of Manassas Park	City Hall, 100 Park Central Plaza, Manassas Park, VA 20111.
Unincorporated Areas of Prince William County	Prince William County Department of Public Works, Environmental Management Division, 5 County Complex Court, Suite 170, Prince William, VA 22192.

[FR Doc. 2023–06833 Filed 4–3–23; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0015]

Homeland Security Advisory Council

AGENCY: The Department of Homeland Security (DHS), the Office of Partnership and Engagement (OPE).

ACTION: Notice of new taskings for the Homeland Security Advisory Council (HSAC).

SUMMARY: On March 27, 2023 the Secretary of DHS, Alejandro N. Mayorkas, issued a memorandum tasking the Homeland Security Advisory Council (HSAC) to establish six subcommittees further outlined below. This notice is not a solicitation for membership.

FOR FURTHER INFORMATION CONTACT: Rebecca Sternhell, Principal Deputy Assistant Secretary & HSAC Designated Federal Official, Homeland Security Advisory Council, Office of Partnership and Engagement, U.S. Department of Homeland Security at hsac@hq.dhs.gov or 202–891–2876.

SUPPLEMENTARY INFORMATION: The Homeland Security Advisory Council provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security on matters related to homeland security. The Homeland Security Advisory Council is comprised of leaders in local law enforcement, first responders, State, local and tribal government, national policy, the private sector, and academia.

The Secretary has requested that the HSAC form new subcommittees to study and provide recommendations in four critical areas for the Department:

1. Development of the Department's Artificial Intelligence (AI) Strategy. This effort will be divided into two subcommittees. One will be focused on how the Department can best use AI to advance critical missions, and the other will be focused on how the Department should be building defenses to the nefarious use of AI in the control of an adversary.

2. Potential revisions to the homeland security grant programs, including the risk methodology that is applied, to ensure the Department is operating the programs optimally in light of the changed threat landscape over the past 20 years.

3. A wholesale review of the immigration Alternatives to Detention (ATD) programs, and recommendations to modernize the programs and make them more effective.

4. Potential revisions to the DHS workplace and workforce skill set. This effort will be divided into two subcommittees. One will review the Department's current diverse work environments—from secure spaces and ports of entry to remote offices—and make recommendations for the workplace of the future. The second subcommittee will assess the alignment of workforce skills with work responsibilities in discrete, critical mission areas.

Schedule: The subcommittees' findings and recommendations will be submitted to the HSAC for its deliberation and vote during a public meeting mid-late Summer 2023.

Dated: March 29, 2023.

Rebecca Kagan Sternhell,

Principal Deputy Assistant Secretary & HSAC Designated Federal Official, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2023–06959 Filed 4–3–23; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0095]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice of Appeal or Motion

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 5, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0095 in the body of the letter, the agency name and Docket ID USCIS–2008–0027. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2008–0027.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Jerry Rigdon, Deputy Chief, telephone

number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS–2008–0027 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal or Motion.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–290B; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–290B standardizes requests for appeals and motions and ensures that the basic information required to adjudicate appeals and motions is provided by applicants and petitioners, or their attorneys or representatives. USCIS uses the data collected on Form I–290B to determine whether an applicant or petitioner is eligible to file an appeal or motion, whether the requirements of an appeal or motion have been met, and whether the applicant or petitioner is eligible for the requested immigration benefit. Form I–290B can also be filed with ICE by schools appealing decisions on Form I–17 filings for certification to ICE's Student and Exchange Visitor Program (SEVP).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–290B is 25,431 and the estimated hour burden per response is 1 hour and 22 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 34,764 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$7,858,179.

Dated: March 29, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–06986 Filed 4–3–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0044]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Action on an Approved Application or Petition

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 5, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0044 in the body of the letter, the agency name and Docket ID USCIS–2007–0012. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2007–0012.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Jerry Rigdon, Deputy Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:**Comments**

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS–2007–0012 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–824; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or

households. This information collection is used to request a duplicate approval notice, as well as to notify and to verify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–824 is 10,571 and the estimated hour burden per response is 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 3,488 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$1,361,016.

Dated: March 29, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023–06981 Filed 4–3–23; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services**

[OMB Control Number 1615–0140]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Citizenship and Integration Direct Service Grant Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the

respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until June 5, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0140 in the body of the letter, the agency name and Docket ID USCIS–2016–0002. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS–2016–0002.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Jerry Rigdon, Deputy Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:**Comments**

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS–2016–0002 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Citizenship and Integration Direct Services Grant Program.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-1482 and Grant Post-Award Evaluation; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. USCIS is authorized to expend funds that are collected for adjudication and naturalization services and deposited into the Immigration Examination Fee Account for the Citizenship and Integration Grant Program (CIGP). See, e.g., Consolidated Appropriations Act, 2016, Title V, sec. 538. This collection includes an assessment of the effectiveness and an ongoing evaluation of citizenship education and naturalization outcomes for grant program participants. To support this assessment, USCIS needs to collect and analyze the responses to a number of data elements. USCIS publicly reports the success of grant recipients. The grant recipient survey will provide the information necessary to monitor the grant program including accomplishments, progress meeting goals, progress of the sub-awardee organization (if applicable), identify challenges in meeting goals, staff and/or organizational development activities, student assessment and progress, and promising practices.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-1482 is 325 and the estimated hour burden per response is 42 hours. The estimated total number of respondents for the information

collection Grant Post-Award Evaluation is 150 with 9 responses per respondent and the estimated hour burden per response is 28 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 51,450 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$22,750.

Dated: March 29, 2023.

Jerry L. Rigdon,

Deputy Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2023-06985 Filed 4-3-23; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-05; OMB Control No. 2502-0306]

60-Day Notice of Proposed Information Collection: HUD-Owned Real Estate Sales Contract and Addendums

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 5, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at Colette.Pollard@hud.gov for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE Department of Housing and

Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette.Pollard@hud.gov or telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD-Owned Real Estate Sales Contract and Addendums.

OMB Approval Number: 2502-0306.

OMB Expiration Date: June 30, 2023.

Type of Request: Revision of currently approved collection.

Form Numbers: HUD-9544, HUD-9548, HUD-9548-B, HUD-9548-C, HUD-9548-G, HUD-9548-H, HUD-9545-Y, HUD-9545-Z, SAMS-1101, SAMS-1103, SAMS-1108, SAMS-1110, SAMS-1111, SAMS-1111-A, SAMS-1117, SAMS-1120, SAMS-1204.

Description of the need for the information and proposed use:

This collection of information consists of the primary sales contract and addenda that support the HUD Real Estate Owned (REO) program. The Asset Disposition and Management System is the case management system and repository for most of the documents included in this collection and tracks the activity of an REO property from HUD's acquisition through its final sale. The forms in this collection are used as part of the collection effort.

The collection also supports the requirements of the Lead Disclosure Rule relative to the disclosure of known lead-based paint and lead-based paint hazards in the sale of properties built before 1978.

With each form, the Public Burden Statement is updated. A revision was made to Model Document, Exclusive Listing Period Purchase Addendum for Governmental Entities and HUD-Approved Nonprofits to form HUD-9548 Sales Contract, eliminating 12 months occupancy requirement. And revisions were made to Form HUD-9548, Sales Contract Property Disposition Program, to clarify language and where the paper/manual

information collection process is replaced with electronic and digital signature processes.

Respondents: Individuals or households, Business or other for profit, Not-for-profit institutions, state, local or tribal government.

Estimated Number of Respondents: 83,606.

Estimated Number of Responses: 83,606.

Frequency of Response: 1.

Average Hours per Response: 0.179.

Total Estimated Burden: 18,894.78.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Jeffrey D. Little,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2023-06943 Filed 4-3-23; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX21EE000101100]

Notice of Public Meeting of Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey, Interior.

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the U.S. Geological Survey

(USGS) is hereby giving notice that the Scientific Earthquake Studies Advisory Committee (SESAC) will meet as noted below.

DATES: The teleconference meetings will be held on Thursday, May 11, 2023, from 11 a.m. to 1 p.m. and 3 p.m. to 5 p.m. Eastern Daylight Time (EDT); Monday, May 15, 2023, from 12 p.m. to 2 p.m. EDT; and Wednesday, May 17, 2023, from 12 p.m. to 2 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Dr. Gavin Hayes, USGS, by email at ghayes@usgs.gov or by telephone at 303-374-4449. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The teleconference meeting will be open to the public. The SESAC will review the current activities of the USGS Earthquake Hazards Program (EHP) and discuss future priorities. Agenda topics will include EHP strategic planning; administration priorities and interactions; budget opportunities; balance of activities supported by the EHP; External Grants; National Earthquake Hazards Reduction Program; National Seismic Hazard Model; ShakeAlert; and reports from SESAC subcommittees.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Members of the public wishing to participate in the teleconference meeting should contact Dr. Gavin Hayes by email at ghayes@usgs.gov no later than three (3) business days prior to the meeting. Teleconference meeting call-in information and any updates to the agenda will be provided via email to registered participants.

Time will be allowed at the public meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the SESAC members, written notice must be

provided to Dr. Gavin Hayes by email at ghayes@usgs.gov at least three (3) business days prior to the meeting. Any written comments received will be provided to the SESAC members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments:

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

Authority: 5 U.S.C. 10.

Linda R. Huey,

Program Specialist, Natural Hazards Mission Area.

[FR Doc. 2023-06888 Filed 4-3-23; 8:45 am]

BILLING CODE 4338-11-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Land Acquisitions; Cayuga Nation, Cayuga County Parcels, Cayuga County, New York

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 113.96 acres, more or less, of land known as the Cayuga County Parcels in the Village of Union Springs and the Town of Springport, Cayuga County, New York, (Site) for the Cayuga Nation, (Tribe) for gaming and other purposes.

DATES: This final determination was made on March 29, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, paula.hart@bia.gov, (202) 219-4066.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 113.96 acres, more or less, in trust for the Tribe under the authority of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. 5108. The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will

immediately acquire title to the Site in the name of the United States of America in trust for the Tribe upon fulfillment of all Departmental requirements. The 113.96 acres, more or less, are described as follows:

Tax Lot No. 134.17–1–1.51 (Approximately 106.960 Acres)

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the west line of New York State Route No. 90 at the northeast corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 225

Thence; North 83°30'22" West, along the north line of said lands of Cayuga Nation of New York, a distance of 371.99 feet to the northwest corner of said lands of Cayuga Nation of New York

Thence; South 04°50'25" West, along the west line of said lands of Cayuga Nation of New York, a distance of 160.00 feet to a point in the north line of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232

Thence; North 83°30'22" West, along the north line of said lands of Union Hose and Engine Company, a distance of 799.54 feet to the northwest corner of said lands of Union Hose and Engine Company

Thence; South 05°25'45" West, along the west line of said lands of Union Hose and Engine Company and other lands of Union Hose and Engine Company as recorded in the Cayuga County Clerk's Office in liber 697 of deeds at page 231, a distance of 534.30 feet to a point in the south line of aforesaid Lot No. 92

Thence; North 83°30'22" West, along the said south line of Lot No. 92, a distance of 1475.56 feet to a point

Thence; North 01°58'30" East, a distance of 418.74 feet to a point

Thence; North 83°31'30" West, a distance of 81.00 feet to a point in the former east line of Lehigh Valley Railroad

Thence; North 01°58'30" East, along the said former east line of Lehigh Valley Railroad, a distance of 387.06 feet to a point

Thence; North 01°06'13" East, continuing along the said former east line of Lehigh Valley Railroad, a distance of 484.62 feet to a point

Thence; North 04°48'31" West, continuing along the said former east line of Lehigh Valley Railroad, a distance of 733.54 feet to a point in the north line of aforesaid Lot No. 92

Thence; South 83°18'47" East, along the said north line of Lot No. 92, a distance of 2484.27 feet to the northwest corner of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1129 of deeds at page 222

Thence; South 00°54'40" East, along the west line of said lands of Cayuga Nation of

New York, a distance of 176.89 feet to a point

Thence; South 04°15'56" East, continuing along the west line of said lands of Cayuga Nation of New York, a distance of 135.00 feet to the southwest corner of said lands of Cayuga Nation of New York

Thence; North 85°44'04" East, along the south line of said lands of Cayuga Nation of New York, a distance of 117.00 feet to a point

Thence; South 04°15'56" East, a distance of 173.22 feet to a point

Thence; South 01°15'36" East, a distance of 200.00 feet to a point

Thence; North 89°40'33" East, a distance of 199.62 feet to a point in the aforesaid west line of New York State Route No. 90

Thence; South 01°15'36" East, along the said west line of New York State Route No. 90, a distance of 305.60 feet to a point

Thence; South 01°50'03" West, continuing along the said west line of New York State Route No. 90, a distance of 184.98 feet to a point

Thence; South 04°50'25" West, continuing along the said west line of New York State Route No. 90, a distance of 184.59 feet to the point and place of beginning
Containing 4,659,193.3 square feet or 106.960 acres of land, more or less.

Tax Lot No. 134.17–1–1.21 (Approximately 1.024 Acres More or Less)

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at the intersection of the north line of said Lot No. 92 and the present west line of New York State Route No. 90

Thence; South 06°35'57" East, along the said present west line of New York State Route No. 90, a distance of 120.03 feet to a point in the said present west line of New York State Route No. 90

Thence; South 85°44'04" West, a distance of 308.04 feet to a point in the east line of lands of Cayuga Nation of New York as recorded in the Cayuga County Clerk's Office in liber 1208 of deeds at page 236

Thence; North 00°54'40" West, along the said east line of lands of Cayuga Nation of New York, a distance of 176.89 feet to a point in the aforesaid north line of Lot No. 92

Thence; South 83°18'47" East, along the said north line of Lot No. 92, a distance of 298.24 feet to the point and place of beginning

Containing 44,618.1 square feet or 1.024 acres, more or less

Tax Lot No. 134.17–1–1.121 (Approximately 0.963 Acres)

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90, said point being located South 06°35'57" East, a distance of 120.03 feet from the

intersection of the said present west line of New York State Route No. 90 with the north line of said Lot No. 92

Thence; South 06°35'57" East, along the said present west line of New York State Route No. 90, a distance of 135.11 feet to the northeast corner of lands of David J. Rouse Jr. & Lisa A. Rouse, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 1244 of deeds at page 171

Thence; South 85°44'04" West, along the north line of said lands of David J. Rouse Jr. & Lisa A. Rouse and the westerly prolongation thereof, a distance of 313.54 feet to a point

Thence; North 04°15'56" West, a distance of 135.00 feet to a point

Thence; North 85°44'04" East, a distance of 308.04 feet to the point and place of beginning

Containing 41,957.0 square feet or 0.963 acres of land, more or less

Tax Lot No. 141.05–1–3 (Approximately 1.366 Acres)

All that tract or parcel of land situate in the Town of Springport, Village of Union Springs, County of Cayuga and State of New York, being a part of Lot No. 92 in said Town, bounded and described as follows:

Beginning at a point in the north line of lands of Union Hose & Engine Company as recorded in the Cayuga County Clerk's Office in liber 860 of deeds at page 232, said point being located South 83°30'22" East, a distance of 799.54 feet from an existing rebar at the northwest corner of said lands of Union Hose & Engine Company

Thence; North 04°50'25" East, a distance of 160.00 feet to a point

Thence; South 83°30'22" East, a distance of 371.99 feet to a point in the west line of New York State Route No. 90

Thence; South 04°50'25" West, along the said west line of New York State Route No. 90, a distance of 160.00 feet to a point in the aforesaid north line of lands of Union Hose & Engine Company

Thence; North 83°30'22" West, along the said north line of lands of Union Hose & Engine Company, a distance of 371.99 feet to the point and place of beginning

Containing 59,493.0 square feet or 1.366 acres of land, more or less

Tax Lot No. 150.00–1–29.1 (Approximately 3.654 Acres)

All that tract or parcel of land situate in the Town of Springport, County of Cayuga and State of New York, being part of Great Lot No. 7 of the East Cayuga Reservation, bounded and described as follows:

Beginning at a point in the present west line of New York State Route No. 90 as established by New York State Appropriation Map No. 31, Parcel No. 40 at the intersection of said west line of New York State Route No. 90 with the north line of lands of Patricia L. Thornton and David J. Thornton as recorded in the Cayuga County Clerk's Office in liber 999 of deeds at page 292

Thence; South 85°55'53" West, along the said north line of said lands of Patricia L.

Thornton and David J. Thornton and continuing along the north line of lands of Robert C. Butler and Karolyn A. Butler as recorded in the Cayuga County Clerk's Office in liber 1012 of deeds at page 291, and also lands of Robert A. Markert and Kathleen M. Markert as recorded in the Cayuga County Clerk's Office in liber 1409 of deeds at page 244, a distance of 681.61 feet to a point in the east line of lands of Walter J. McDonald, now or formerly, as recorded in the Cayuga County Clerk's Office in liber 720 of deeds at page 338

Thence; northeasterly, along the said east line of lands of Walter J. McDonald on a curve to the left with a radius of 1891.50 feet, a distance of 292.17 feet to the southwest corner of lands of Lorie K. Fischer and Todd R. Fischer as recorded in the Cayuga County Clerk's Office in liber 1183 of deeds at page 206. Said curve having a chord bearing of North 23°09'17" East and a chord distance of 291.88 feet

Thence; North 85°55'53" East, along the said south line of said lands of Lorie K. Fischer and Todd R. Fischer, a distance of 553.31 feet to a point in the aforesaid present west line of New York State Route No. 90

Thence; South 02°54'59" East, along the said present west line of New York State Route No. 90, a distance of 259.60 feet to the point and place of beginning Containing 159,162.6 square feet or 3.654 acres of land, more or less

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023-06979 Filed 4-3-23; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_CA_FRN_MO4500161911]

Notice of Public Meetings: Northern California District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Northern

California District Resource Advisory Council (RAC) will meet in 2023 as follows.

DATES: The 2023 schedule of meetings for the Northern California District RAC is as follows: April 26–27; May 24–25; and August 23–24. The Council will participate in field tours of BLM-managed public lands on Wednesday, April 26, May 24, and August 23 from 10 a.m. to 4 p.m. each day, and will meet in formal session on Thursday, April 27, May 25, and August 24. All meetings start at 8 a.m. and conclude at 2:30 p.m. Each meeting will be held in-person with a virtual participation option available on the Zoom platform. All Council meetings and field tours are open to the public.

ADDRESSES: The April meeting will be held, and the field tour will commence and conclude, at the Bureau of Land Management Northern California District Office, 6640 Lockheed Drive, Redding, CA 96002. The May meeting will be held, and the field tour will commence and conclude, at the BLM Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. The August meeting will be held, and the field tour will commence and conclude, at the BLM Eagle Lake Field Office, 2550 Riverside Drive, Susanville, CA 96130. If the COVID-19 protocols are reinstated and in-person meetings are prohibited, the field tours will be cancelled, and the meetings will be held virtually. Meeting links, participation instructions, and field tour details will be provided to the public via news media, social media, and posted on the RAC's web page at blm.gov/get-involved/rac/California/northern-california-rac, and through personal contact 2 weeks prior to the meeting. Written comments pertaining to the meeting can be sent to the BLM Northern California District Office, at the address listed earlier, marked Attention: RAC meeting comments.

FOR FURTHER INFORMATION CONTACT: Public Affairs Officer Joseph J. Fontana, telephone: (530) 260-0189, email: jfontana@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land

management on BLM-managed public lands in northern California and northwest Nevada. For the April meeting, agenda topics include review and comment on development of the BLM Northern California Integrated Resource Management Plan (NCIP), review and comment on a recreation business plan for the Redding Field Office, updates on proposed changes to the BLM's grazing regulations, status of a management plan revision for the Cascade Siskiyou National Monument (CSNM), and a status report on pending land acquisitions. For the May meeting, agenda topics include review and comment on: (1) development of the NCIP, (2) a recreation business plan for the King Range National Conservation Area, and (3) development of a management plan revision for the CSNM; discussion of the RAC's potential development of guidelines for recreation use; and updates on pending land acquisitions. For the August meeting, agenda topics include review and comment on the management plan for the NCIP and on the management plan revision for the CSNM; an update on wild horse and burro management; and a status report on the BLM's grazing regulations.

All meetings are open to the public. Each formal council meeting will have time allocated for public comments at 11 a.m. Depending on the number of people wishing to speak and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Northern California District Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the RAC.

Public Disclosure of Comments: 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.

Members of the public are welcome on field tours but must provide their own transportation and meals.

Detailed meeting minutes for the RAC meetings will be maintained in the Northern California District Office. Minutes will also be posted to the California RAC web page.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or

other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

(Authority: 43 CFR 1784.4–2)

Dereck Wilson,

Northern California District Manager.

[FR Doc. 2023–06972 Filed 4–3–23; 8:45 am]

BILLING CODE 4331–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_MT_FRN_MO#4500161776]

Notice of Realty Action: Recreation and Public Purposes Act Classification and Segregation for Philipsburg Park and Trails, Granite County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) has examined 15.59 acres of public lands in Granite County, Montana, and has found them suitable for classification for conveyance to the town of Philipsburg under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended. The town of Philipsburg applied for conveyance under the R&PP Act and proposes to use the lands for a park and walking trails that will increase public recreation opportunities in the area.

DATES: Submit written comments regarding this classification and R&PP application on or before May 19, 2023.

ADDRESSES: Written comments may be mailed, or hand delivered to the BLM, Missoula Field Office, 3255 Fort Missoula Road, Missoula, MT 59808. Comments may also be submitted electronically at BLM_MT_Missoula_FO@blm.gov. The BLM will not consider comments received by telephone.

FOR FURTHER INFORMATION CONTACT:

Lonna Sandau, Realty Specialist, telephone: (406) 329–3914, email: lsandau@blm.gov.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Lonna Sandau. Individuals outside the United States should use the relay services offered within their country to make international calls to

the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The lands have been examined as described in an environmental assessment (DOI–BLM–MT–B010–2020–0007–EA) and identified as suitable for conveyance under the R&PP Act. Conveyance would be in conformance with the 2020 Missoula Field Office Resource Management Plan. The lands are legally described as:

Principal Meridian, Montana

T. 7 N., R. 13 W.,
sec. 30, lots 10 and 15.

T. 7 N., R. 14 W.,
sec. 24, lots 5 and 13;
sec. 25, lots 15, 16, 20, and 24.

The areas described aggregate 15.59 acres.

The town of Philipsburg lies in a scenic valley surrounded by mountains and great views but with limited opportunities for hiking or walking trails close to town. The proposal for a park and walking trails would be adjacent to the town, providing access and recreational opportunity. While much of the land would remain open, the town proposes to construct walking trails, including improvement of an existing trail to reduce grades and improve drainage and tread width, install signs, and construct a parking lot, with picnic tables and other amenities as funds become available. The walking trails proposed for the public lands requested for conveyance under the R&PP Act would connect with trails that cross Philipsburg streets, public roads, and Philipsburg property to make an integrated recreational network.

When public lands are conveyed under the R&PP Act, the United States retains a reversionary interest, and any future development would not be allowed without written pre-approval by the BLM. The BLM monitors reversionary interests in perpetuity to ensure R&PP patent holders use their conveyed lands for the purposes for which they received them. The lands are not needed for any Federal purposes, and this conveyance would be in the local and regional interest.

All interested parties will receive a copy of this notice once it is published in the **Federal Register**. A copy of the notice will also be published in the newspaper of local circulation once a week for 3 consecutive weeks.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including location under the mining laws, except for lease or conveyance under the R&PP Act and

leasing under the mineral leasing laws. The segregation will terminate upon issuance of a patent, upon final rejection of the application, or 18 months from the date of this notice, whichever occurs first.

The conveyance of the lands, if it occurs, will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

3. All mineral deposits in the lands so patented and the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations as established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights.

4. Conveyance of the parcels is subject to valid existing rights.

5. An appropriate indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or operations on the patented lands.

6. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

7. A reversionary provision stating that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or her delegate, the patentee or its approved successor attempted to convey title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan. No portion of the lands shall, under any circumstance, revert to the United States if any such portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, or release of any hazardous substance.

Classification Comments: Interested persons may submit comments involving the suitability of the lands for development of a park and walking trails. Comments on the classification are restricted to whether the lands are physically suited for the proposal, whether the use will maximize the future use or uses of the lands, whether the use is consistent with local planning

and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested persons may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly relating to the suitability of the lands for use as a park or walking trails.

Any adverse comments will be reviewed by the BLM Montana/Dakotas State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on June 5, 2023. The lands will not be offered for conveyance until after the classification becomes effective.

Before including your address, phone number, email address, or other personal identifying information in any comment, 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: 43 CFR 2741.5).

Erin Carey,
Field Manager, Missoula Field Office.

[FR Doc. 2023-06994 Filed 4-3-23; 8:45 am]

BILLING CODE 4331-20-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500169318]

Public Meetings for the John Day-Snake Resource Advisory Council, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM), John Day-Snake Resource Advisory Council (RAC) and the Planning Subcommittee will meet as indicated below.

DATES: The John Day-Snake RAC Planning Subcommittee will meet from 6 p.m. to 8 p.m. Pacific Daylight Time (PDT) Wednesday, May 10, 2023; and

the full John Day-Snake RAC will meet Thursday, June 22, from 8 a.m. to 4:30 p.m. and reconvene Friday, June 23 at 8 a.m. and conclude at noon. The Subcommittee meeting will be held virtually via the Zoom for Government platform. The full John Day-Snake RAC meeting will be held in-person in Baker City, Oregon, at the BLM Baker Field Office and a virtual participation option will be available. A 30-minute public comment period will be offered at 7:20 p.m. PDT Wednesday, May 10; at 4 p.m. PDT Thursday, June 22; and at 11:30 a.m. PDT Friday, June 23.

ADDRESSES: The BLM Baker Field Office is located at 3100 H Street, Baker, OR 97814.

Final agendas for each meeting and contact information regarding Zoom meeting details will be published on the RAC web page at least 10 days in advance at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac>.

FOR FURTHER INFORMATION CONTACT:

Kaitlyn Webb, Public Affairs Officer, 3050 N 3rd Street, Prineville, OR 97754; telephone: 541-416-6700; email: kwebb@blm.gov. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The 15-member RAC was chartered and appointed by the Secretary of the Interior. Its diverse perspectives are represented in commodity, conservation, and general interests. The RAC provides advice to the BLM and, as needed, to U.S. Forest Service resource managers regarding management plans and proposed resource actions on public lands in the John Day-Snake area. All meetings are open to the public in their entirety. Information to be distributed to the RAC must be provided to its members prior to the start of each meeting.

Standing agenda items include management of energy and minerals, timber, rangeland and grazing, commercial and dispersed recreation, wildland fire and fuels, and wild horses and burros; review of recommendations regarding proposed actions by Vale or Prineville BLM districts and the Wallowa-Whitman, Umatilla, Malheur, Ochoco, and Deschutes National Forests; and any other business that may reasonably come before the RAC. A final

agenda will be posted online at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac> at least 10 days prior to the meeting.

The Designated Federal Officer will attend the meeting, take minutes, and publish the minutes on the RAC web page at <https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/john-day-rac>.

All calls/meetings are open to the public in their entirety. The public may send written comments to the Subcommittee and RAC in response to material presented to: BLM Prineville District; Attn. Amanda Roberts; 3050 NE 3rd St., Prineville, OR 97754.

Before including your address, phone number, email address, or other personal identifying information in your comments, please be aware that your entire comment—including your 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 we will be able to do so.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

(Authority: 43 CFR 1784.4-2)

Amanda Roberts,
Prineville District Manager.

[FR Doc. 2023-06950 Filed 4-3-23; 8:45 am]

BILLING CODE 4331-24-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035570; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University has completed

an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Pacific County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and Museum Studies, Central Washington University, 400 University Way, Ellensburg, WA 98926-7544, telephone (509) 963-2671, email *Lourdes.Henebry-DeLeon@cwu.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Central Washington University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Central Washington University.

Description

In 1957, human remains representing, at minimum, two individuals were removed from the Martin Site (45-PC-7) in Pacific County, WA, by then University of Washington graduate student James Alexander. Site 45-PC-7 dates from 700 to 1800 years BP. Sometime later, these human remains, together with associated funerary objects, were among a collection returned to Central Washington University Department of Anthropology by (former) faculty member Dr. Alexander. While unpacking the boxes containing this collection, staff identified possible human remains, whereupon the collection was transferred to the NAGPRA Director, who formally accessioned the collection in 2021 (CWU Accession Box EC). No known individuals were identified. The 13 associated funerary objects are one bag of dirt, eight animal bones, one small rock, and three shells.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the

identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, biological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Central Washington University has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 13 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, Central Washington University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Central Washington University is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing

regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06917 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035573; PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Mohave County, AZ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Tamara Billie, U.S. Department of Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879-9711, email *tamara.billie@bia.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BIA. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the BIA.

Description

Human remains representing, at minimum, seven individuals were removed from Mohave County, AZ. The human remains derive from four different sites.

In 1964, during an authorized highway improvement project, the Museum of Northern Arizona collected human remains representing, at minimum, one individual from a burial at Site NA8964. This site is located between State Route 389 and Cottonwood Creek, approximately 2.5 miles southwest of the intersection with U.S. Highway 89. The burial (Burial 1) contained the human remains of an adult who had been buried fully flexed and supine, with the head oriented to the west. No associated funerary objects are present. The site is associated with the Virgin tradition archeological complex, and based on the ceramic evidence, it was occupied during the Pueblo II period (A.D. 900–1150).

In 1965, during an authorized highway improvement project, the Museum of Northern Arizona collected human remains representing, at minimum, one individual from a burial at Site NA9072. This site is located approximately one mile south of Pipe Springs National Monument. The burial (Burial 1) contained the human remains of an adult 35+ years old who had been buried flexed on the left side, with the head oriented to the south. The six associated funerary objects are one Vermillion Black-on-white bowl, one Glendale Black-on-gray bowl, one miniature North Creek Corrugated jar, two North Creek Corrugated jars, and one petrified wood projectile point. The site is associated with the Virgin tradition archeological complex, and based on the ceramic evidence, it was occupied during the Pueblo II–III period (A.D. 1100–1300).

In 1965, during an authorized highway improvement project, the Museum of Northern Arizona collected human remains representing, at minimum, three individuals from three burials at Site NA9074. This site is located approximately three miles west of Pipe Springs National Monument on a large rise at the southern end of Pipe Valley. Burial 1 contained the human remains of a juvenile 11–13 years old who had been buried flexed on the back, with the head oriented to the west. No associated funerary objects are present. Burial 2 contained the human remains of an adult 35+ years old who had been buried fully flexed on the back, with the head oriented to the northeast. The 34 associated funerary objects are one quartz flake, one Moapa Corrugated sherd, one pebble polisher, one charcoal sample, and 30 sherds. Burial 3 contained the human remains of a fetus. No associated funerary objects are present. The site is associated with the Virgin tradition archeological complex, and based on the ceramic evidence, it

was occupied during the Pueblo II–III period (A.D. 1000–1200).

In 1965, during an authorized highway improvement project, the Museum of Northern Arizona collected human remains representing, at minimum, two individuals from two burials at Site NA9079. This site is located within the right-of-way of State Route 389, near the intersection of Pipe Spring Road. Burial 1 contained the human remains of an adult male 45–55 years old who had been buried flexed and in a sitting position, with the head oriented to the southeast. The 99 associated funerary objects are one Boulder Gray jar, one North Creek Gray jar, one Shinarump Plain bowl, one Deadmans Black-on-red bowl, one miniature jar of unknown ware, one bone whistle, 16 ceramic sherds, 9 faunal bones, and 68 Olivella shell beads. Burial 2 contained the human remains of a juvenile 1.5–2.5 years old who had been buried flexed and supine, with the head oriented to the southwest. The nine associated funerary objects are one North Creek Corrugated jar, one Snake Valley Gray pitcher, two North Creek Gray canteens, one miniature Shinarump Plain jar, one St. George Black-on-gray bowl, one North Creek Black-on-gray bowl, one North Creek Gray effigy vessel, and one Olivella shell bead. The site is associated with the Virgin tradition archeological complex, and based on the ceramic evidence, it was occupied during the Pueblo II–III period (A.D. 1050–1250).

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and oral traditional.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the BIA has determined that:

- The human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- The 148 objects described in this notice are reasonably believed to have

been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BIA is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–06914 Filed 4–3–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS–WASO–NAGPRA–NPS0035574;
PPWOCRADN0–PCU00RP14.R50000]**

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Coconino and Apache Counties, AZ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Ms. Tamara Billie, U.S. Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879-9711, email tamara.billie@bia.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BIA. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the BIA.

Description

Human remains representing, at minimum, one individual were removed from either Coconino County, AZ. At an unknown date, human remains were removed from a burial at Site A5162, near Oraibi Wash. In 1962, the El Paso Natural Gas Survey transferred the human remains and associated funerary objects to the Museum of Northern Arizona. Burial 1 contained the human remains of an adult. The two associated funerary objects are one metal saddle stirrup and one necklace comprised of shell and turquoise beads and pendants. Based on the associated funerary objects, the human remains are historic (post-1900) Navajo.

Human remains representing, at minimum, one individual were removed from Coconino County, AZ. In 1958, during an authorized project, the Museum of Northern Arizona collected these remains from a burial eroding out of a slope at Site NA7121. This site is located along the Little Colorado River, 6.5 miles upstream from the Cameron bridge. Burial 1 contained the human remains of a juvenile <6 years old who

had been buried in a wooden coffin. The seven associated funerary objects are one enameled pan, one rusted cup, one metal toy cup, one metal saucer, one piece of burned wood, one piece of black cloth, and one piece of animal fur. Based on the burial location and the associated funerary objects, the human remains are historic Navajo.

Human remains representing, at minimum, one individual were removed from Apache County, AZ. Sometime during the 1920s, a private individual collected these remains from a burial at Site NA9102. This site located within a small cave on the south side of Canyon de Chelly, across from Sliding Rock Ruin. In 1960, the human remains and an associated funerary object were transferred to the Museum of Northern Arizona. Burial 1 contained the human remains of an adult male 40+ years old who had been buried flexed, in a cist. The 10 associated funerary objects are 10 fragments of a cloth cloak stitched together from different fabrics. Based on the associated patchwork cloak, the human remains belong to the Navajo Classic period (ca. 1750–1804).

Human remains representing, at minimum, one individual were removed from Apache County, AZ. In 1968, during an authorized excavation for a powerline, the Museum of Northern Arizona collected these remains from a burial at Site NA10091. This site is located on the north side of Interstate 40 near Houck, on a ridge east of Black Creek. Site NA10091 is an 1880s Navajo forked-stick hogan, and the burial was located in a rock crevice on the south side of the hogan. Burial 1 contained the human remains of a juvenile 9–11 years old who had been buried extended on the left side, with the head oriented to the north. The 24 associated funerary objects are one necklace of trade beads, one leather item, one copper bracelet, and 21 faunal bones.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, historical, and archeological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate

Indian Tribes and Native Hawaiian organizations, the Bureau of Indian Affairs has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- The 43 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Navajo Nation, Arizona, New Mexico, & Utah.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BIA is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06916 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-WASO-NAGPRA-NPS0035571;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Coconino County, AZ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Ms. Tamara Billie, U.S. Department of Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879-9711, email tamara.billie@bia.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BIA. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the BIA.

Description

Human remains representing, at minimum, one individual, were removed from site NA5998 in Coconino County, AZ. Site NA5998 is located on the Hualapai Indian Reservation, 9.2 miles north of Frazier Wells. In 1957, a burial was excavated by the Museum of Northern Arizona during an authorized project to recover human remains exposed by road grading activity. The incomplete skeleton, which was found flexed on the left side and with the head oriented to the east, belongs to an adult female 35-45 years old. The 43 associated funerary objects are two chert

scrapers, one jasper hammerstone/polishing stone, one obsidian scraper, and 39 ceramic sherds. The burial is associated with the Cohonina archeological complex and is dated between A.D. 900 and 1175.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, oral traditional, anthropological, and archeological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the BIA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 43 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests

for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The BIA is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06912 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-WASO-NAGPRA-NPS0035572;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from McKinley County, NM.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Ms. Tamara Billie, U.S. Department of Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Mailbox 44, Albuquerque, NM 87104, telephone (505) 879-9711, email tamara.billie@bia.gov.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the BIA. The National Park Service is not responsible for the determinations in this notice.

Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the BIA.

Description

Human remains representing, at minimum, two individuals were removed from site NA11527 in McKinley County, NM. This site is located along Zuni Route Z5 (Nutria Road), 1.75 miles north of New Mexico SR 53. Two burials were excavated by the Museum of Northern Arizona in 1973, during an authorized highway improvement project. Burial 1 contained the human remains of an adult of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. Burial 2 contained the human remains of a neonate of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. The site is associated with the Cibola tradition archeological complex, and the ceramic evidence indicates an occupation during the Pueblo III period (A.D. 1150–1300).

Human remains representing, at minimum, five individuals were removed from site NA11530 in McKinley County, NM. This site is located within the right-of-way of Zuni Route Z5 (Nutria Road), 1.5 miles north of New Mexico SR 53. Five burials were excavated by the Museum of Northern Arizona in 1973, during an authorized highway improvement project. Burial 1 contained the human remains of an adult male (45+ years old). This individual was buried semi-flexed on the right side and with the head oriented to the east. The 38 associated funerary objects are one miniature indented corrugated Cibola Gray Ware jar, two St. Johns Polychrome bowls, one quartzite hammerstone, six lots of pollen samples, one faunal bone fragment, and 27 ceramic sherds. Burial 2 contained the human remains of an adult male (30–35 years old). This individual was buried semi-flexed on the right side and with the head oriented to the northeast. The 13 associated funerary objects are one Klagetoh Black-on-white bowl, one flotation sample, three pollen samples, and eight ceramic sherds. Burial 3 contained the human remains of an adult male (45–55 years old). This individual was buried semi-flexed on the right side and with the head oriented to the east. The 75 associated funerary objects are one St. Johns Polychrome bowl, one Pinedale Polychrome pitcher, two pollen samples, one flotation sample, four faunal bones, three plant material

samples, two groundstones, and 61 ceramic sherds. Burial 4 contained the human remains of an adult of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. Burial 5 contained the human remains of a juvenile (<6 years old) of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. The site is associated with the Cibola tradition archeological complex, and the ceramic evidence indicates an occupation during the Pueblo III period (A.D. 1150–1300).

Human remains representing, at minimum, one individual were removed from site NA14084 in McKinley County, NM. This site is located within the right-of-way of Zuni Route Z4 (BIA Route 4), approximately 1.4 miles north of New Mexico SR 53. One burial was excavated by the Museum of Northern Arizona in 1975, during an authorized highway improvement project. Burial 1 contained the human remains of a juvenile (2–3 years) of indeterminate sex; burial orientation is unknown. The two associated funerary objects are one stone concretion and one flaked stone. The site is associated with the Cibola tradition archeological complex, and the ceramic evidence indicates an occupation during the Pueblo I and Pueblo II periods (A.D. 800–1150).

Human remains representing, at minimum, one individual were removed from site NA14086 in McKinley County, NM. This site is located within the right-of-way of Zuni Route Z4 (BIA Route 4), 1.7 miles north of New Mexico SR 53. One burial was excavated by the Museum of Northern Arizona in 1975, during an authorized highway improvement project. Burial 1 contained the human remains of an adult of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. The site is associated with the Cibola tradition archeological complex, and the ceramic evidence indicates an occupation during the Pueblo II to Pueblo III periods (A.D. 900–1250).

Human remains representing, at minimum, one individual were removed from site NA14099 in McKinley County, NM. This site is located within the right-of-way of Zuni Route Z4 (BIA Route 4), 1.9 miles north of New Mexico SR 53. One burial was excavated by the Museum of Northern Arizona in 1975, during an authorized highway improvement project. Burial 1 contained the human remains of an adult of indeterminate sex; burial orientation is unknown. No associated funerary objects are present. The site is associated with the Cibola tradition archeological complex, and the ceramic

evidence indicates an occupation during the Pueblo I–III periods (A.D. 700–1300).

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical, oral traditional, anthropological, and archeological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the BIA has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- The 128 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, the BIA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human

remains and associated funerary objects are considered a single request and not competing requests. The BIA is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06918 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NAGPRA-NPS0035575;
PPWOCRADN0-PCU00RP14.R50000]

Notice of Inventory Completion: Minnesota Indian Affairs Council, St. Paul, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Minnesota Indian Affairs Council has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Big Stone, Chisago, Faribault, Hennepin, Grant, Ramsey, and Traverse Counties, MN, and from an unknown county in southern MN.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Dylan Goetsch, Minnesota Indian Affairs Council, 161 St. Anthony Avenue, Suite 919, St. Paul, MN 55103, email dylan.goetsch@state.mn.us.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Minnesota Indian Affairs Council. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held

by the Minnesota Indian Affairs Council.

Description

In the spring of 1951, human remains representing, at minimum, one individual, were unearthed during construction for the Theater of Seasons Café (21BS0020) in Big Stone County, MN. In January of 1997, a private citizen turned the human remains over the Minnesota Office of the State Archaeologist. On August 1, 1997, the Minnesota State Archaeologist transferred the human remains to the Minnesota Indian Affairs Council (H323). These human remains belong to a male of middle-to-late adult age. No known individual was identified. No associated funerary objects are present.

On September 14, 1931, human remains representing, at minimum, four individuals were removed from a disturbed mound during Highway 8 construction on the south side of the highway between Lindstrom and Center City in Chisago County, MN. On March 27, 2012, the human remains were transferred to the Minnesota Indian Affairs Council (H455). No known individuals were identified. No associated funerary objects are present.

On September 16, 2014, human remains representing, at minimum, one individual were recovered from a sandbar on the Blue Earth River, a tributary of the Minnesota River, southwest of Winnebago in Faribault County, MN, by a private citizen canoeing on the river. Following their recovery, these human remains were sent to the Ramsey County Medical Examiner's Office. On September 25, 2015, the human remains were transferred to the Minnesota Indian Affairs Council (H487). No known individual was identified. No associated funerary objects are present.

In 1963 or 1964, human remains representing, at minimum, one individual were unearthed on a farm in Grant County, MN, by a person working for the family that owned the land. In August of 2018, the landowners brought the human remains to the Grant County Historical Society. On September 14, 2018, the Grant County Historical Society sent the human remains to the Office of the State Archaeologist. On November 30, 2018, the human remains were transferred to the Minnesota Indian Affairs Council (H521). No known individual was identified. No associated funerary objects are present.

In 2014, Hennepin County personnel disturbed numerous burials belonging to the Shaver Mound group in Minnetonka. Following the burial disturbance, MIAC and Hamline

University recovered and reburied the human remains.

Human remains representing, at minimum, one individual (a single human bone fragment) was found after the reburial and recovery and was turned over to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

In the fall of 2021, human remains representing, at minimum, one individual (the distal epiphysis of a human femur) was identified by Upper Sioux tribal monitors during a water main replacement project in Minnetonka and was turned over to the Minnesota Indian Affairs Council. No known individual was identified. No associated funerary objects are present.

At an unknown time, human remains representing, at minimum, eight individuals were removed from the MacMillan property in Hennepin County, MN. In 2017, two of these human remains were transferred to the Minnesota Indian Affairs Council by private citizens and six individuals were recovered by the Minnesota Indian Affairs Council during the removal of the MacMillan home (H498). No known individuals were identified. The six associated funerary objects include one Prairie du Chien chert tool, one swan river chert flake, and four quartz fragments. (In October 1999, human remains from the MacMillan property were repatriated to the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota following publication of a Notice of Inventory Completion in the **Federal Register** (64 FR 43211-43222, August 9, 1999).

In 1882, human remains representing, at minimum, one individual were removed from Indian Mounds Park (21RA10) in Ramsey County, MN, by Theodore Hayes Lewis. As part of the Northwestern Archaeological Survey, Lewis collected artifacts including this human skull with a red clay "death mask" innesota. Before he left Minnesota, Lewis sold most of the collections from this survey to Reverend Edgar Mitchell. In 1905, Mitchell donated his collections to the Minnesota Historical Society, including the artifacts and human remains he received from Lewis (Lewis #746). The Minnesota Historical Society implemented a new numbering system in 1918, and these human remains were given the catalog number 3583.A2664. In 1987, the human remains were transferred to the Minnesota Indian Affairs Council (H319.16). No known individual was identified. The three associated funerary objects are one lot of loose dirt (possibly from the clay death

mask), one lot of fabric fragments, and one lot of newspaper.

Sometime in the 1920s or 1930s, human remains representing, at minimum, two individuals were removed from Indian Mounds Park in Popes County, MN, by a private citizen who lived near the mounds. In 2017, the collector's daughter gave the human remains to the Office of the State Archaeologist who, in turn, transferred them to the Minnesota Indian Affairs Council (H501). No known individuals were identified. No associated funerary objects are present.

Sometime between 1920 and 1935, human remains representing, at minimum, one individual were removed from a farm in Browns Valley, Traverse County, MN, by a private citizen. On April 12, 2013, the human remains were transferred to the Minnesota Indian Affairs Council (H469). No known individual was identified. No associated funerary objects are present.

Sometime around 1950, human remains representing, at minimum, one individual were removed from a farm in Browns Valley, Traverse County, MN, by a private citizen. In December of 2018, the University of Minnesota received the human remains from the collector's daughter. On January 16, 2019, the human remains were transferred to the Minnesota Indian Affairs Council (H523). No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, two individuals were removed from an unknown site in southern Minnesota and turned over to the Minnesota Bureau of Criminal Apprehension. Sometime between 1986 and 1988, these human remains were transferred to the Minnesota Indian Affairs Council (H147). No known individuals were identified. No known individuals were identified. The two associated funerary objects are one wood fragment with a nail and one ceramic sherd.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archaeological, geographic, historical, oral traditional, and other relevant information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Minnesota Indian Affairs Council has determined that:

- The human remains described in this notice represent the physical remains of 24 individuals of Native American ancestry.
- The 11 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, the Minnesota Indian Affairs Council must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Minnesota Indian Affairs Council is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–06919 Filed 4–3–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0035569; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Mütter Museum of the College of Physicians of Philadelphia; Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Mütter Museum of the College of Physicians of Philadelphia has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. The human remains were removed from New Jersey.

DATES: Disposition of the human remains in this notice may occur on or after May 4, 2023.

ADDRESSES: Kate Quinn, Executive Director, Mütter Museum and Historic Medical Library, College of Physicians of Philadelphia, 19 S 22nd Street, Philadelphia, PA 19103, telephone (267) 807–1924 Ext. 1924, email kquinn@collegeofphysicians.org.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Mütter Museum of the College of Physicians of Philadelphia. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Mütter Museum of the College of Physicians of Philadelphia.

Description

At an unknown date, human remains representing, at minimum, six individuals were removed from New Jersey. The human remains consist of a skull (F1996.135) belonging to one individual; two mandibles (F1996.132, F1996.133) belonging to two individuals; occipital fragments (F1996.134) belonging to one individual; and skull fragments (F1996.136, F1996.137) belonging to two individuals. The original collector of these human remains was Dr. Matthew Cryer, M.D., D.D.S. Whether Dr. Cryer removed these human remains himself or acquired them from another person or entity is unknown. On December 23, 1938, Dr. Cryer donated these human remains to the Mutter Museum. No known individuals were identified. No associated funerary objects are present.

Aboriginal Land

The human remains and associated funerary objects in this notice were removed from known geographic locations. Historical documents and consultation information demonstrate that these locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a treaty.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Mütter Museum of the College of Physicians of Philadelphia has determined that:

- The human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.
- Based on the Treaty of Fort Pitt, signed on September 17, 1778, the area from which the human remains described in the notice were removed is the aboriginal land of the Lenape people, who are represented by the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES** (see above). Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after May 4, 2023. If competing requests for disposition are received, the Mütter Museum of the College of Physicians of Philadelphia must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains are considered a single request and not competing requests. The Mütter Museum of the College of Physicians of Philadelphia is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06910 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

**[NPS-WASO-NAGPRA-NPS0035576;
PPWOCRADNO-PCU00RP14.R50000]**

Notice of Inventory Completion: Minnesota Indian Affairs Council, St. Paul, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Minnesota Indian Affairs Council has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Pipestone County, MN.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after May 4, 2023.

ADDRESSES: Dylan Goetsch, Minnesota Indian Affairs Council, 161 St. Anthony

Avenue, Suite 919, St. Paul, MN 55103, email dylan.goetsch@state.mn.us.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Minnesota Indian Affairs Council. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Minnesota Indian Affairs Council.

Description

Around 1900, human remains representing, at minimum, two individuals were removed by Charles Bennet while excavating a mound at the base of the Leaping Rock Site in the Pipestone National Monument in Pipestone County, MN. Subsequently, these human remains were donated to the Pipestone County Historical Society. The human remains were attached to a board that bore the inscription "Fragments of skeletal bones and clothing of body from a grave of a distinguished son of a Dakota (Sioux) Chief who was killed in 1834 in attempting to leap from the Pipestone Cliffs to the Maitou [sic] or Leaping Rock. (See account in Catlin's North American Indians.)." On July 10th, 1990, the human remains were transferred to the Minnesota Indian Affairs Council (H178). No known individuals were identified. The three associated funerary objects are one woven fabric piece with green patina and two small, brown felt pieces.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, oral traditional, and other relevant information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian

organizations, the Minnesota Indian Affairs Council has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after May 4, 2023. If competing requests for repatriation are received, the Minnesota Indian Affairs Council must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Minnesota Indian Affairs Council is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: March 22, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023-06911 Filed 4-3-23; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM-2023-0011]

Notice of Availability of a Draft Environmental Impact Statement for SouthCoast Wind Energy, LLC's (Formerly Mayflower Wind Energy, LLC) Proposed Wind Energy Facility Offshore Massachusetts; Extension of Comment Period

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Draft environmental impact statement (DEIS); extension of comment period.

SUMMARY: On February 17, 2023, BOEM published a notice of availability (NOA) in the **Federal Register** announcing a public comment period regarding the DEIS for SouthCoast Wind Energy, LLC's (SouthCoast Wind) construction and operations plan (COP) for a proposed wind energy facility offshore Massachusetts. BOEM is extending the comment period on the DEIS. This notice announces a 15-day extension of the public comment period from April 3, 2023, to April 18, 2023. After BOEM addresses comments provided, BOEM will publish a final environmental impact statement (FEIS). The FEIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

DATES: Comments must be received no later than April 18, 2023.

ADDRESSES: The DEIS and detailed information about SouthCoast Wind's project, including the COP, can be found on BOEM's website at <https://www.boem.gov/renewable-energy/state-activities/southcoast-wind>. Comments can be submitted in any of the following ways:

- In written form by mail, enclosed in an envelope labeled, "SouthCoast Wind COP DEIS" and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.
- Through the [regulations.gov](https://www.regulations.gov) web portal: Navigate to <http://www.regulations.gov> and search for Docket No. BOEM-2023-0011. Click on the "Comment" button below the document link. Enter your information and comment, then click "Submit Comment."

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia

20166, (703) 787-1730 or jessica.stromberg@boem.gov.

SUPPLEMENTARY INFORMATION: BOEM is extending the comment period for the SouthCoast Wind DEIS because the revised version of the COP used to prepare the DEIS was recently posted on BOEM's website at <https://www.boem.gov/renewable-energy/state-activities/southcoast-wind-formerly-mayflower-wind/>. The DEIS analyzed the effects from the revised COP, not the original COP, and reflects the applicant's most current proposal. Please refer to the NOA published in the **Federal Register** (88 FR 10378) on February 17, 2023, for further information.

Comments already submitted in response to the February 17, 2023, NOA do not need to be resubmitted. BOEM discourages anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments in their entirety, including your name and address, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personal identifiable information (PII) included in your comment from the public record. However, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure such as unwarranted privacy invasion, embarrassment, or injury. 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 inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2023-06980 Filed 4-3-23; 8:45 am]

BILLING CODE 4340-98-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-565 and 731-TA-1341 (Review)]

Hardwood Plywood From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty and countervailing duty orders on hardwood plywood from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: March 6, 2023.

FOR FURTHER INFORMATION CONTACT:

(Stamen Borisson (202) 205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On March 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 73792, December 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).²

For further information concerning the conduct of these reviews and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the

subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on April 19, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission’s rules.

Written submissions.—As provided in § 207.62(d) of the Commission’s rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,³ and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before April 27, 2023 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by April 27, 2023. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

³ The Commission has found the domestic interested party responses submitted on behalf of the Coalition for Fair Trade in Hardwood Plywood and its individual members, Columbia Forest Products, Commonwealth Plywood Co., Ltd., Manthei Wood Products, States Industries LLC, and Timber Products Company, and respondent interested party responses submitted on behalf of Canusa Wood Products Limited, Hardwoods Specialty Products USLP, Holland Southwest International, Inc., McCorry & Company Limited, Medallion Forest Products, Northwest Hardwoods, Inc., Richmond International Forest Products, LLC, and Taraca Pacific, Inc., to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission’s rules.

By order of the Commission.

Issued: March 30, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–06971 Filed 4–3–23; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed teleconference meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 21, 2023, from 10:00 a.m. to 5:00 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT:

Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at (202) 317–3648 or elizabeth.j.vanosten@irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will hold a teleconference meeting on April 21, 2023, from 10:00 a.m. to 5:00 p.m. (EDT). The meeting will be closed to the public.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. 1009, that the subject of the meeting falls within the exception to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

¹ A record of the Commissioners’ votes, the Commission’s statement on adequacy, and any individual Commissioner’s statements will be available from the Office of the Secretary and at the Commission’s website.

² Chairman David S. Johanson and Commissioner Amy A. Karpel found that the respondent interested party group response was adequate and voted to conduct full reviews.

Dated: March 30, 2023.

Thomas V. Curtin, Jr.,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2023-06977 Filed 4-3-23; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1160]

Importer of Controlled Substances Application: Sharp Clinical Services, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sharp Clinical Services, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 4, 2023. Such persons may also file a written request for a hearing on the application on or before May 4, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator,

8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 8, 2023, Sharp Clinical Services, LLC, 2400 Baglyos Circle, Bethlehem, Pennsylvania 18020-8024, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid 3,4-Methylenedioxymethamphetamine.	2010 7405	I
5-Methoxy-N-N-dimethyltryptamine.	7431	I

The company plans to import the listed controlled substances for distribution and clinical trials. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023-06948 Filed 4-3-23; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1177]

Importer of Controlled Substances Application: SpecGX LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: SpecGX, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 4, 2023. Such persons may also file a written request for a hearing on the application on or before May 4, 2023.

ADDRESSES: The Drug Enforcement Administration (DEA) requires that all

comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 28, 2023, SpecGX LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana	7360	I
Phenylacetone	8501	II
Coca Leaves	9040	II
Thebaine	9333	II
Opium, Raw	9600	II
Poppy Straw Concentrate	9670	II
Tapentadol	9780	II

The company plans to import the listed controlled substances for bulk manufacture into Active Pharmaceutical Ingredients (API) for distribution to its customers. In reference to Tapentadol (9780) and Thebaine (9333), the company plans to import intermediate forms of these controlled substances for further manufacturing prior to distribution to its customers. In reference to drug code 7360 (Marihuana), the company plans to import synthetic cannabinol. No other activity for this drug is authorized for this registration. Placement of these codes onto the company's registration does not translate into automatic approval of subsequent permit

applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2023-06953 Filed 4-3-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1178]

Importer of Controlled Substances Application: ANI Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: ANI Pharmaceuticals, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 4, 2023. Such persons may also file a written request for a hearing on the application on or before May 4, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement

Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on March 3, 2023, ANI Pharmaceuticals, Inc., 70 Lake Drive, East Windsor, New Jersey 08520, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin ...	7437	I
Levorphanol	9220	II

Psilocybin (7437) will be imported to support research, formulation development, and clinical trials of an experimental drug product for the United States market. Levorphanol (9220) will be imported as bulk active pharmaceutical ingredient (API) to support the manufacturing of Food and Drug Administration-approved dosage forms for distribution in the United States. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023-06949 Filed 4-3-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA-1175]

Bulk Manufacturer of Controlled Substances Application: Research Triangle Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Research Triangle Institute has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to

Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 5, 2023. Such persons may also file a written request for a hearing on the application on or before June 5, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on March 14, 2023, Research Triangle Institute, 3040 East Cornwallis Road, Hermann Building, Room 106, Research Triangle Park, North Carolina 27709, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols	7370	I

The company plans to bulk manufacture the listed controlled substance synthetically for distribution to its customers for research and as analytical reference standards. No other activities for these drug codes are authorized for this registration.

Matthew Strait,

Deputy Assistant Administrator.

[FR Doc. 2023-06951 Filed 4-3-23; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****[Docket No. DEA-1176]****Bulk Manufacturer of Controlled Substances Application: SpecGx LLC****AGENCY:** Drug Enforcement Administration, Justice.**ACTION:** Notice of application.

SUMMARY: SpecGx LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 5, 2023. Such persons may also file a written request for a hearing on the application on or before June 5, 2023.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on February 14, 2023, SpecGx LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147-3457, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Norlevorphanol	9634	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide).	9821	I
Butyryl Fentanyl	9822	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h).	9850	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Nabilone	7379	II
ANPP (4-Anilino-N-phenethyl-4-piperidine).	8333	II
Phenylacetone	8501	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Diphenoxylate	9170	II
Ecgonine	9180	II
Hydrocodone	9193	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-A.	9232	II
Meperidine intermediate-B.	9233	II
Meperidine intermediate-C.	9234	II
Methadone	9250	II
Methadone intermediate	9254	II
Dextropropoxyphene, bulk (non-dosage forms).	9273	II
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Opium tincture	9630	II
Opium, powdered	9639	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Tapentadol	9780	II
Fentanyl	9801	II
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Methylphenidate	1724	II
Pentobarbital	2270	II
4-Anilino-N-Phenethyl-4-Piperidine (ANPP).	8333	II
Tapentadol	9780	II
Fentanyl	9801	II

drug codes are authorized for this registration.

Matthew Strait,*Deputy Assistant Administrator.*

[FR Doc. 2023-06952 Filed 4-3-23; 8:45 am]

BILLING CODE 4410-09-P**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****[Docket No. OSHA-2018-0005]****Whistleblower Stakeholder Meeting: Outreach and Training****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing a public meeting to solicit comments and suggestions from stakeholders on its outreach and training efforts in support of the whistleblower laws it enforces.

DATES: The public meeting will be held on May 10, 2023, from 1:00 p.m. to 4:00 p.m., ET via Zoom. Persons interested in attending the meeting must register by May 3, 2023. In addition, comments relating to the "Scope of Meeting" section of this document must be submitted by May 24, 2023.

ADDRESSES:

Electronically: You may submit materials, including attachments, electronically at <http://www.regulations.gov>, which is the Federal eRulemaking portal. Follow the on-line instructions for submissions. All comments should be identified with Docket No. OSHA-2018-0005.

Registration to Attend and/or to Participate in the Meeting: If you wish to attend the public meeting, make an oral presentation at the meeting, or participate in the meeting, you must register using this link <https://www.eventbrite.com/e/whistleblower-outreach-stakeholder-meeting-tickets-558199739447> or this link for registration in Spanish <https://www.eventbrite.com/e/entradas-reunion-para-partes-interesadas-sobre-los-denunciantes-que-son-trabajadores-558210240857> by close of business on May 3, 2023. Each participant will be allowed to speak for up to 5 minutes. If there is extra time at the end of the meeting, participants may be given extra time to speak. There is no fee to register for the public meeting. After reviewing the requests to present, OSHA will contact each participant prior to the meeting to inform them of the speaking

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Tetrahydrocannabinols ...	7370	I
Psilocybin	7437	I
Codeine-N-oxide	9053	I
Noroxymorphone	9145	I
Difenoxin	9168	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Alphamethadol	9605	I
Betamethadol	9609	I

The company plans to bulk manufacture the listed controlled substances for sale to its customers as Active Pharmaceutical Ingredients (APIs) and Analytical Research Standards (ARS) for formulation and analytical development purposes. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these

order. We will provide Spanish-language translation.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693-1999; email: meilinger.francis@dol.gov.

For general information: Ms. Meghan Smith, Program Analyst, OSHA Directorate of Whistleblower Protection Programs, U.S. Department of Labor; telephone: (202) 693-2199; email: osha.dwpp@dol.gov.

SUPPLEMENTARY INFORMATION:

A. Scope of Meeting

OSHA is interested in obtaining information from the public on key issues facing the agency's whistleblower program. This meeting is part of an ongoing series of meetings requesting public input on this program. The agency is seeking suggestions on how it can improve its outreach and training efforts in the Whistleblower Protection program. Please note that the agency does not have the authority to change the statutory language and requirements of the laws it enforces. In particular, the agency invites input on the following:

1. What can the agency do to improve the Whistleblower Protection Program's website, www.whistleblowers.gov?
2. What additional materials would be beneficial for the agency to make publicly available on its website?
3. What types of whistleblower training videos or presentations would be useful for the public to better understand the whistleblower laws enforced by OSHA?
4. How can OSHA better engage with complainants and respondents?

B. Request for Comments

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments (see **ADDRESSES** above). Electronic comments include recorded oral comments. Comments may be submitted in any language. To permit time for interested persons to submit data, information, or views on the issues in the "Scope of Meeting" section of this notice, please submit comments by May 24, 2023, and include Docket No. OSHA-2018-0005. If you have questions regarding how to submit comments, please contact osha.dwpp@dol.gov or 202-693-2199.

C. Access to the Public Record

Electronic copies of this **Federal Register** notice are available at: <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, is also available on the Directorate of Whistleblower Protection

Programs' web page at: <http://www.whistleblowers.gov>.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by section 11(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 660(c)); Secretary's Order 08-2020 (May 15, 2020).

Signed at Washington, DC.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-06946 Filed 4-3-23; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Thursday, May 18, 2023, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606-8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after July 1, 2023. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of

objects to be indemnified and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: March 29, 2023.

Jessica Graves,

Legal Administrative Specialist, National Endowment for the Humanities.

[FR Doc. 2023-06865 Filed 4-3-23; 8:45 am]

BILLING CODE 7536-01-P

OFFICE OF PERSONNEL MANAGEMENT

Personnel Demonstration Project; Pay Banding and Performance-Based Pay Adjustments in the National Nuclear Security Administration

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of approval of a modification to a demonstration project final plan.

SUMMARY: The Civil Service Reform Act, authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in policies or procedures would result in improved Federal human resources management. On December 21, 2007, OPM published a document in the **Federal Register** announcing final approval of a demonstration project plan for the National Nuclear Security Administration (NNSA), a separately organized agency within the U.S. Department of Energy (DOE). This notice constitutes OPM's approval of a modification of NNSA's final project plan to change performance rating levels and a related change to the performance rating level pay shares.

DATES: These modifications to NNSA's demonstration project final plan are effective immediately upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: National Nuclear Security Administration: Melanie Ramirez, 505-261-6338, melanie.ramirez@nnsa.doe.gov. Office of Personnel Management: Michael Bostwick, 720-308-3265, michael.bostwick@opm.gov.

SUPPLEMENTARY INFORMATION:**1. Background**

OPM approved NNSA's demonstration project final plan and it was published in the **Federal Register** on December 21, 2007 (72 FR 72776). The demonstration project was implemented on March 16, 2008, modified by three technical corrections to the final project plan on July 31, 2008, as published in the **Federal Register** (73 FR 44786) and modified by minor administrative changes, one participating organization change, and two employee coverage changes on February 14, 2014 (79 FR 9007).

All employees of the Naval Nuclear Propulsion Program in the competitive services (as defined in section 2102 of title 5, United States Code) and all employees of the Department of Navy who are assigned to the Naval Nuclear Propulsion Program and are in the excepted services (as defined in section 2103 of title 5, United States Code) participate in the NNSA's demonstration project. With the publishing of the current NNSA Act on February 24, 2020, NNSA's demonstration project was extended for 10 years from the date of publication.

NNSA's demonstration project has been evaluated routinely with the latest evaluation taking place in 2017. These evaluations resulted in overall positive results.

2. Statement of Purpose

The principal purposes of the NNSA demonstration project are to—

(1) Modify and simplify the General Schedule (GS) classification system by establishing pay bands which may cover more than one grade; and

(2) Modify the GS pay system to base pay increases on performance distinctions made under a credible, strategically aligned performance appraisal program and thereby improve the results-oriented performance culture within the organization.

The primary goals of the project are to:

(1) Improve hiring by allowing NNSA to compete more effectively for high quality employees through the judicious use of higher entry salaries;

(2) Motivate and retain staff by providing faster pay progression for high-performing employees;

(3) Improve the usefulness and responsiveness of the position classification system to managers;

(4) Increase the efficiency of administering the position classification system through a simplified pay-banded application of the current General Schedule grade structure, and reduce

the procedural steps and documentation requirements traditionally associated with classifying positions;

(5) Eliminate automatic pay increases (*i.e.*, annual adjustments that normally take effect the first day of the first pay period beginning on or after January 1) by making pay increases performance sensitive, so that only Fully Successful (known as "Fully Meets Expectations" in NNSA) and higher performers will receive pay adjustments, and the best performers will receive the largest pay adjustments;

(6) Integrate with, build upon, and advance the work of several key human capital management improvement initiatives and projects currently underway in NNSA, including—

a. Advancing the ongoing refinement of NNSA's enterprise-wide performance management program, including automated refinements,

b. Achieving greater parity, though not complete harmony, with NNSA's mature excepted service pay-banded and pay-for-performance system (*e.g.*, will have a lower high-end pay band; no automatic pay increases, etc.),

c. Building on the simplified position description (PD) format and automated PD library that are already in place,

d. Continuing to develop improved performance management skills among first-line supervisors through increased program rigor, additional training, and better guidance materials, to better develop standards that reflect differences in performance,

e. Establishing a system of career enhancing career paths for the purpose of developing, advancing, and retaining employees,

f. Building on the workforce analysis and planning system, already in place, to identify FTE needs and competency needs and skills gaps, to conduct a valid occupational analysis to construct meaningful pay bands.

To accomplish these goals, NNSA modified and waived parts of the GS classification and pay system by identifying broad career paths, establishing pay bands which often combined grades, eliminating longevity-based step progression, and providing for annual pay increases based on performance.

3. Description of Changes to the Project Plan

NNSA amends the original demonstration project final plan (72 FR 72776) to make two significant changes to the NNSA demonstration project performance rating system. One change concerns performance rating levels and one change concerns the number of

performance shares assigned to identified performance rating levels.

(1) Performance Rating Levels Change

Section III, B.1. indicates the NNSA current performance appraisal program uses a four-level rating pattern to both summarize performance and to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, and Significantly Exceeds Expectations, respectively.

NNSA believes that a rating recognizing employee performance above the Fully Meets Expectations (FME) level but not at the level of Significantly Exceeds Expectations (SEE) is a potential motivating factor for employees. In response, NNSA is altering the current Performance Rating titles to better reflect levels of employee performance to recognize employees who exceed expectations but do not meet the requirements for the SEE performance rating.

Section III, B.1. is updated to read "The program currently uses a five-level rating pattern to both summarize performance and to appraise performance at the element level, its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, 4, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, Exceeds Expectations, and Significantly Exceeds Expectations, respectively."

(2) Performance-Based Pay Adjustments—Performance Shares Change

Section III, C.2. discusses how performance shares are distributed based on performance rating level and states: "Initially, the number of shares for each rating level will be as follows: 4 shares are assigned to a Significantly Exceeds Expectations summary rating when an employee receives SEE ratings in all critical elements; 3 shares are assigned when an employee receives a summary rating of SEE, but one or more critical elements are rated at FME; 2 shares are assigned to an FME summary rating when one or more critical elements are rated at SEE; and 1 share is assigned to an FME summary rating when no critical element is rated below FME. Employees who receive a final summary rating of FME with one critical element rated at the NI level are not eligible for any shares from the performance pay pool."

The table below, which is included in the DEMO Policies and Procedures Manual, illustrates the current performance share distribution.

Summary rating level	Derivation	Shares
Level 4—Significantly Exceeds Expectations (SEE)	All Specific Performance Objectives (SPOs) are rated at the SEE level.	4
	A majority of the SPOs are rated at the SEE level and the remaining SPOs rated at the FME level.	3
Level 3—Fully Meets Expectations (FME)	There is an equal amount of SPOs rated at the SEE and FME levels, or a majority of the SPOs are rated at the FME level with the remaining SPOs rated at the SEE level.	2
Level 2—Needs Improvement (NI)	All SPOs are rated at the FME level	1
Level 1—Does Not Meet Expectations (DNME)	One or more NI SPOs with none rated DNME	0
	One or more SPOs rated DNME	0

Section III, C.2. is updated to read “The number of shares for each rating level will be as follows: 4 shares are assigned to a Significantly Exceeds Expectations summary rating when an employee receives SEE ratings in all critical elements; 3 shares are assigned when an employee receives a summary rating of EE, when a majority of SPOs are rated SEE or EE and the remaining

are rated FME; 2 shares are assigned to an FME summary rating when an equal amount of SEE or EE and FME SPOs, or a majority are rated FME and the remaining are rated SEE or EE; 1 share is assigned to an FME rating when all SPOs are rated FME and no critical element is rated below FME. Employees who receive a final summary rating of FME with one or more critical elements

rated at the NI level are not eligible for any shares from the performance pay pool.”

The performance share distribution is updated to reflect the implementation of the five-level performance rating change. Pay share distribution is outlined in the table below:

Summary rating level	Derivation	Shares
Level 5—Significantly Exceeds Expectations (SEE)	All SPOs are rated SEE	4
Level 4—Exceeds Expectations (EE)	Majority of SPOs are rated SEE or EE and the remaining are rated FME.	3
Level 3—Fully Meets Expectations (FME)	Equal SEE or EE and FME SPOs or majority are rated FME and the remaining are rated SEE or EE.	2
	All SPOs are rated FME	1
Level 2—Needs Improvement (NI)	One or more NI SPOs with none rated DNME.	0
Level 1—Does Not Meet Expectations (DNME)	One or more SPOs rated DNME	0

This change will take effect immediately upon publication and the rating share pattern will be applied in computing performance-based shares at the end of FY 2023 performance appraisal period. This table will be incorporated into the NNSA DEMO policies and procedures manual.

4. Notification Responsibilities

As required by 5 CFR 470.315, NNSA has the following notification responsibilities for this project modification: Notify and make copies of this **Federal Register** notice available to all employees affected by the activities of the demonstration project.

U.S. Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Approval

Pursuant to 5 CFR 470.315, OPM approves the following modification to NNSA’s final project plan.

Specific Textual Changes to the Project Plan

In FR Doc. 07–6144, published on December 21, 2007 (72 FR 72776), make the following textual changes:

(1) *On Page 72794*: “Program Requirements”

Program requirements is amended, as excerpted:

“The program currently uses a five-level rating pattern to both summarize performance and to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Levels 1, 2, 3, 4, and 5, which NNSA has labeled Does Not Meet Expectations, Needs Improvement, Fully Meets Expectations, Exceeds Expectations, and Significantly Exceeds Expectations, respectively.”

(2) *On Page 72795*: “Performance Shares”

Performance Shares is amended, as excerpted:

“The number of shares for each rating level will be as follows: 4 shares are assigned to a Significantly Exceeds Expectations summary rating when an employee receives SEE ratings in all critical elements; 3 shares are assigned

when an employee receives a summary rating of EE, when a majority of SPOs are rated SEE or EE and the remaining are rated FME; 2 shares are assigned to an FME summary rating when an equal amount of SEE or EE and FME SPOs, or a majority are rated FME and the remaining are rated SEE or EE; 1 share is assigned to an FME rating when all SPOs are rated FME and no critical element is rated below FME.”

[FR Doc. 2023–06766 Filed 4–3–23; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–126 and CP2023–129; MC2023–127 and CP2023–130]

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:* April 5, 2023.

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):* MC2023-126 and CP2023-129; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 108 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* April 5, 2023.

2. *Docket No(s):* MC2023-127 and CP2023-130; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 109 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 28, 2023; *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:* April 5, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023-06841 Filed 4-3-23; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023-128 and CP2023-131]

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:* April 6, 2023.

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

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).

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).

deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2023–128 and CP2023–131; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 110 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: March 29, 2023; *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*: April 6, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023–06933 Filed 4–3–23; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97220; File No. SR–NYSEARCA–2023–27]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of SGI U.S. Large Cap Core ETF

March 29, 2023.

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 March 24, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under NYSE Arca Rule 8.601–E: SGI U.S. Large Cap Core ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.³ Commentary .01 to Rule 8.601–E

³ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEARCA–2019–95). Rule 8.601–E(c)(1) provides that “[t]he term ‘Active Proxy Portfolio Share’ means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940 (‘Investment Company’) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (‘NAV’); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601–E(c)(2) provides that “[t]he term ‘Actual Portfolio’ means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601–E(c)(3) provides that “[t]he term ‘Proxy Portfolio’ means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.” Rule 8.601–E(c)(4) provides that the term “Custom Basket” means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

requires the Exchange to file separate proposals under section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) of Active Proxy Portfolio Shares of the SGI U.S. Large Cap Core ETF (the “Fund”) under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E⁴ and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁵ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).⁶ The composition of

⁴ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEARCA–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEARCA–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEARCA–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEARCA–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEARCA–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁵ NYSE Arca Rule 8.600–E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁶ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

the portfolio of an issue of Active Proxy Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next-determined NAV. A series of Active Proxy Portfolio Shares will disclose the Proxy Portfolio on a daily basis, which, as described above, is designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares. As set forth in NYSE Arca Rule 8.601–E(d)(2)(B)(ii), for Active Proxy Portfolio Shares using a Custom Basket, each Business Day,⁷ before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34–E(a)), the Investment Company shall make publicly available on its website the composition of any Custom Basket transacted on the previous Business Day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

The Commission has previously approved⁸ and noticed for immediate

effectiveness⁹ the listing and trading on the Exchange of series of Active Proxy Portfolio Shares under NYSE Arca Rule 8.601–E.

The Shares of the Fund will be series of The RBB Fund, Inc. (the “Company”), a Maryland corporation registered with the Commission as an open-end management investment company.¹⁰

Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601–E; 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR–NYSEArca–2020–51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601–E); 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR–NYSEArca–2020–104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E) (the “Stance Order”).

⁹ See Securities Exchange Act Release Nos. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (NYSEArca–2021–46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); 92958 (September 13, 2021), 86 FR 51933 (September 17, 2021) (NYSEArca–2021–77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR–NYSEArca–2021–84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Schwab Ariel ESG ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares); 94486 (March 22, 2022), 87 FR 17351 (March 28, 2022) (SR–NYSEArca–2022–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Columbia Seligman Semiconductor and Technology ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares); 94908 (May 13, 2022), 87 FR 30524 (May 19, 2022) (SR–NYSEArca–2022–28) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Principal Real Estate Active Opportunities ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)); 94902 (May 12, 2022), 87 FR 30286 (May 18, 2022) (SR–NYSEArca–2022–29) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the IQ Winslow Large Cap Growth ETF and IQ Winslow Focused Large Cap Growth ETF Under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares)).

¹⁰ The Company is registered under the 1940 Act. On April 8, 2022, the Company filed a registration statement on Form N–1A under the 1940 Act relating to the Fund (File No. 811–05518) (the “Registration Statement”). The Company filed a third amended application for an order under section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder on September 26, 2022 (File No. 812–15352). See Investment Company Act Release No. 34835 (February 17, 2023) (the “Application”). On March 15, 2023, the Commission issued an order under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release Nos. 34858 (March 15, 2023)) (the “Exemptive Order”). Investments made by the Fund

Summit Global Investments, LLC will be the investment adviser to the Fund (the “Adviser”). U.S. Bank, N.A. will serve as the Fund’s custodian (the “Custodian”). Quasar Distributors, LLC will act as the distributor (the “Distributor”) for the Fund.

Commentary .04 to NYSE Arca Rule 8.601–E provides that, if the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or has access to non-public information regarding the Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Commentary .04 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Rule 5.2–E(j)(3); however, Commentary .04, in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer, reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.¹¹ Commentary .04 is

will comply with the conditions set forth in the Application and the Exemptive Order. The description of the operation of the Fund herein is based, in part, on the Registration Statement, Application, and Exemptive Order. The Exchange will not commence trading in Shares of the Fund until the Registration Statement is effective.

¹¹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment

under the 1940 Act. Information reported on Form N–PORT for the third month of a fund’s fiscal quarter will be made publicly available 60 days after the end of a fund’s fiscal quarter. Form N–PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A series of Active Proxy Portfolio Shares’ SAI and Shareholder Reports will be available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

⁷ “Business Day” is defined to mean any day that the Exchange is open, including any day when the Fund satisfies redemption requests as required by section 22(e) of the 1940 Act.

⁸ See Securities Exchange Act Release Nos. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601–E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601–E) (the “Natixis Order”); 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR–NYSEArca–2019–96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601–E); 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR–NYSEArca–2019–92) (Notice of Filing of Amendment No. 3 and

also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Commentary .04 relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, applicable to an Investment Company’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, and not just to the underlying portfolio, as is the case with Managed Fund Shares.

In addition, Commentary .05 to Rule 8.601–E provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will

advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

implement and maintain a “fire wall” with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Any person related to the Adviser or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or has access to non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable or changes thereto.

In addition, any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto, will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to the Fund’s Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Description of the Fund

According to the Registration Statement, the Adviser will identify a Proxy Portfolio for the Fund that is designed to recreate the daily performance of the Fund’s Actual Portfolio and will only include securities and investments in which the Fund may invest. While the Fund’s Proxy Portfolio and Actual Portfolio will hold some of the same securities, the Proxy Portfolio and Actual Portfolio may not include identical securities.

The composition of the Proxy Portfolio will be published on the

Fund’s website (www.sgi.com) each Business Day before the commencement of trading of the Fund’s Shares. The Fund’s website will include the following information for each portfolio holding in the Proxy Portfolio: (1) ticker symbol; (2) CUSIP or other identifier; (3) description of holding; (4) quantity of each security or other asset held; and (5) percentage weight of the holding in the Proxy Portfolio. The Proxy Portfolio will be reconstituted daily, and the Adviser will not make intra-day changes to the Proxy Portfolio except to correct errors in the published Proxy Portfolio.

The Fund will, at the end of each trading day, calculate the percentage weight overlap between its Proxy Portfolio and Actual Portfolio (the “Proxy Overlap”) and the standard deviation over the past three months of the daily proxy spread (*i.e.*, the difference, in percentage terms, between the Proxy Portfolio per share NAV and that of the Actual Portfolio at the end of the trading day) (the “Tracking Error”) and publish such information on its website before the opening of trading each Business Day.

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.¹² Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

According to the Registration Statement, the Fund’s investment objective is long-term capital

¹² Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs traded on a U.S. exchange; exchange-traded notes (“ETNs”) traded on a U.S. exchange; U.S. exchange-traded common stocks; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”) in the Exchange’s Core Trading Session (normally, 9:30 a.m. to 4:00 p.m. Eastern time (“E.T.”)); U.S. exchange-traded preferred stocks; U.S. exchange-traded American Depositary Receipts (“ADRs”); U.S. exchange-traded real estate investment trusts; U.S. exchange-traded commodity pools; U.S. exchange-traded metals trusts; U.S. exchange-traded currency trusts; and U.S. exchange-traded futures that trade contemporaneously with the Fund’s Shares. In addition, the Fund may hold cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements). Pursuant to the Application and Exemptive Order, the Fund will not hold short positions or invest in derivatives other than U.S. exchange-traded futures, will not borrow for investment purposes, and will not purchase any securities that are illiquid investments at the time of purchase.

appreciation. The Fund will, under normal circumstances, invest at least 80% of its assets in securities of companies within the Russell 1000 Index and S&P 500 Index. The Fund's investments will generally consist of primarily of common stocks, but may also include preferred stocks, warrants to acquire common stock, and securities convertible into common stock. The Adviser will seek to achieve the Fund's investment objective by investing in stocks that the Adviser believes exhibit less volatile price patterns, strengthening business metrics (e.g., earnings, debt, return on assets, competition, customers, industry), and quantitative factors such as earnings variability, leverage, and volatility.

Investment Restrictions

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund's holdings will be limited to and consistent with permissible holdings as described in the Application and Exemptive Order and all requirements in the Application and Exemptive Order.¹³

The Fund's investments, including derivatives, will be consistent with its investment objectives and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).¹⁴

Purchases and Redemptions

According to the Registration Statement, the Company will issue and sell Shares of the Fund only in specified minimum size "Creation Units" on a continuous basis through the Distributor at their NAV next determined after receipt of an order, on any Business Day, in proper form. The NAV of the Fund's Shares will be calculated each Business Day as of the close of regular trading on the Exchange, ordinarily 4:00 p.m. E.T. A Creation Unit will generally consist of at least 25,000 Shares.

According to the Registration Statement, Shares of the Fund will be purchased and redeemed in Creation Units. Creation Units will generally be purchased in-kind through the deposit of a designated portfolio of securities (the "Deposit Securities"), which will

typically replicate the Proxy Portfolio, plus the "Cash Component," which is an amount equal to the difference between the NAV of the Fund's shares (per Creation Unit) and the market value of the Deposit Securities or "Deposit Cash" (as defined below), as applicable. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities or Deposit Cash, as applicable. The Deposit Cash is a "cash in lieu" amount that the Company may permit or require to be added to the Cash Component to replace any Deposit Security. Together, the Deposit Securities or Deposit Cash, as applicable, and the Cash Component constitute the "Fund Deposit." The names and quantities of the instruments that constitute the Deposit Securities will be the same as the Proxy Portfolio, except to the extent that the Fund requires purchases and redemptions to be made entirely or in part on a cash basis. Creation Units will typically be redeemed in exchange for "Fund Securities" (which may not be identical to the Deposit Securities) and a "Cash Redemption Amount," which represents the difference between the NAV of the Shares being redeemed and the value of the Fund Securities.

Creation Units of the Fund may be purchased and/or redeemed entirely or partially for cash in the Company's discretion. When full or partial cash purchases or redemptions of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases or redemptions thereof.¹⁵

The identity and number of shares of the Deposit Securities or the amount of Deposit Cash, as applicable, required for a Fund Deposit may change from time to time. The Fund, through the National Securities Clearing Corporation (the "NSCC"), will make available on each Business Day, immediately prior to the opening of business on the Exchange, the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the Fund Deposit. The published Fund Deposit will apply until such time as the next-announced composition of the Deposit Securities is made available, and there will be no intra-day changes except to correct errors in the published Fund Deposit.

The Fund Deposit will be published each Business Day regardless of whether the Fund decides to issue or redeem Creation Units entirely or in part on a cash basis. The identity of the Fund Securities that will be applicable to redemption requests received in proper form on a Business Day will also be made available prior to the opening of business on the Exchange on each Business Day.

All orders to purchase or redeem Creation Units must be placed with the Distributor by or through an Authorized Participant, who may engage in creation or redemption transactions directly with the Fund.¹⁶ Orders to purchase or redeem Creation Units will be accepted until the "Cut-Off Time," generally 4:00 p.m. E.T. The date on which an order to purchase or redeem Creation Units is placed is referred to as the "Order Placement Date." All Creation Unit orders must be received by the Distributor no later than the Cut-Off Time in order to receive the NAV determined on the Order Placement Date. When the Exchange closes earlier than normal, the Fund may require orders for Creation Units to be placed earlier in the Business Day.

Availability of Information

The Fund's website (www.sgi.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include on a daily basis, per Share for the Fund: (1) the prior Business Day's NAV; (2) the prior Business Day's "Closing Price" or "Bid/Ask Price";¹⁷ and (3) a calculation of the premium/discount of such Closing Price or Bid/Ask Price against such NAV.¹⁸ The Adviser has represented that the Fund's website will also provide: (1) any other information regarding premiums/discounts as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended, and (2) any

¹⁶ According to the Registration Statement, an "Authorized Participant" is (i) a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC or (ii) a DTC Participant.

¹⁷ The "Bid/Ask Price" is the midpoint of the highest bid and lowest offer based upon the National Best Bid and Offer as of the time of calculation of the Fund's NAV. The "National Best Bid and Offer" is the current national best bid and national best offer as disseminated by the Consolidated Quotation System or UTP Plan Securities Information Processor. The "Closing Price" of Shares is the official closing price of the Shares on the Exchange.

¹⁸ The "premium/discount" refers to the premium or discount to the NAV at the end of a trading day and will be calculated based on the last Bid/Ask Price on a given trading day.

¹³ See *id.*

¹⁴ The Fund's broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund's first full calendar year of performance.

¹⁵ The Adviser represents that, to the extent the Company effects the creation or redemption of Shares in cash on any given day, such transactions will be effected in the same manner for all Authorized Participants (as defined below) placing trades with the Fund on that day.

information regarding the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The Fund's website also will disclose the information required under Rule 8.601-E(c)(3).¹⁹ The website and information will be publicly available at no charge.

The identity and quantity of investments in the Proxy Portfolio for the Fund will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The website will also include information relating to the Proxy Overlap and Tracking Error, as discussed above. With respect to each Custom Basket utilized by the Fund, each Business Day, before the opening of trading in the Core Trading Session (as defined in NYSE Arca Rule 7.34-E(a)), the Fund's website will also include the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the Proxy Portfolio only with respect to cash.

Typical mutual fund-style annual, semi-annual and quarterly disclosures contained in the Fund's Commission filings will be provided on the Fund's website on a current basis.²⁰ Thus, the Fund will publish the portfolio contents of its Actual Portfolio on a periodic basis, and no less than 60 days after the end of every fiscal quarter.

Investors can also obtain the Fund's SAI, Shareholder Reports, Form N-CSR, N-PORT, and Form N-CEN. The prospectus, SAI, and Shareholder Reports are available free upon request, and those documents and the Form N-CSR, N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website. The Exchange also notes that pursuant to the Application, the Fund must comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information.

Information regarding the market price of Shares and trading volume in Shares, will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be

published daily in the financial section of newspapers.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association ("CTA") high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²¹ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.601-E(d)(2)(D) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If the Exchange becomes aware that the NAV, Proxy Portfolio, or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not disseminated to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio, or Actual Portfolio is available to all market participants at the same time.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace in all trading sessions in accordance with NYSE Arca Rule 7.34-E(a). As provided in NYSE Arca Rule 7.6-E, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601-E. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions.

A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. In addition, pursuant to Rule 8.601-E(d)(1)(B), the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Company that (i) the NAV per Share of the Fund will be calculated daily, (ii) the NAV, Proxy Portfolio, and the Actual Portfolio for the Fund will be made publicly available to all market participants at the same time, and (iii) the Company and any person acting on behalf of the Company will comply with Regulation Fair Disclosure under the Act, including with respect to any Custom Basket.

With respect to Active Proxy Portfolio Shares, all of the Exchange member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") will continue to monitor Exchange members for compliance with such requirements.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²² The

¹⁹ See note 3, *supra*. Rule 8.601-E(c)(3) provides that the website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weighting of the holding in the portfolio.

²⁰ See note 6, *supra*.

²¹ See NYSE Arca Rule 7.12-E.

²² FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²³

The Adviser will make available daily to FINRA and the Exchange the Actual Portfolio of the Fund, upon request, as necessary to assist with the performance of the surveillances and investigations referred to above.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures applicable to Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with

listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares.

The Exchange will utilize its existing procedures to monitor issuer compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the issuer of a series of Active Proxy Portfolio Shares, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires an issuer of Active Proxy Portfolio Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require issuers to represent that they will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. As part of its surveillance procedures, the Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

With respect to the Fund, all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The Exchange will obtain a representation from the Company, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

section 6(b) of the Act,²⁴ in general, and furthers the objectives of section 6(b)(5) of the Act,²⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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.²⁶

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.601-E.

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁷

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and underlying exchange-traded instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The daily dissemination of the identity and quantity of Proxy Portfolio component investments, together with the right of Authorized Participants to create and redeem each day at the NAV, will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Closing Price or Bid/Ask Price and NAV.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Rule 5.3-E.

²⁷ See note 13, *supra*.

²³ For a list of the current members of ISG, see www.isgportal.org.

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the Company that the NAV per Share of the Fund will be calculated daily and that the NAV, Proxy Portfolio, and Actual Portfolio for the Fund will be made available to all market participants at the same time. Investors can obtain the Fund's SAI, shareholder reports, and its Form N-CSR, Form N-PORT, and Form N-CEN. The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-CSR, Form N-PORT, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website.

Commentary .03 to NYSE Arca Rule 8.601-E provides that the Exchange will implement and maintain written surveillance procedures applicable to Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Active Proxy Portfolio Shares. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Active Proxy Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of Active Proxy Portfolio Shares. With respect to the Fund, the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of the Fund upon request as necessary to facilitate the performance of the surveillances and investigations referred to above.

The Exchange will utilize its existing procedures to monitor compliance with the requirements of Rule 8.601-E. For example, the Exchange will continue to use intraday alerts that will notify Exchange personnel of trading activity

throughout the day that may indicate that unusual conditions or circumstances are present that could be detrimental to the maintenance of a fair and orderly market. The Exchange will require from the Company, upon initial listing and periodically thereafter, a representation that it is in compliance with Rule 8.601-E. The Exchange notes that Commentary .01 to Rule 8.601-E requires the issuer of Shares to notify the Exchange of any failure to comply with the continued listing requirements of Rule 8.601-E. In addition, the Exchange will require the issuer to represent that it will notify the Exchange of any failure to comply with the terms of applicable exemptive and no-action relief. The Exchange will rely on the foregoing procedures to become aware of any non-compliance with the requirements of Rule 8.601-E.

In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency.

Quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the CTA high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade. Intraday price information for all exchange-traded instruments, which include all eligible instruments except cash and cash equivalents, will be available from the exchanges on which they trade, or through major market data vendors or subscription services. Intraday price information for cash equivalents is available through major market data vendors, subscription services and/or pricing services.

The website for the Fund will include a form of the prospectus that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12-E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Rule 8.601-E(d)(2)(D), which sets forth circumstances under which Shares of the Fund will be halted. In addition, as noted above, investors will have ready access to the Proxy Portfolio and quotation and last sale information for the Shares. The identity and quantity of

investments in the Proxy Portfolio will be publicly available on the Fund's website before the commencement of trading in Shares on each Business Day. The Shares will conform to the initial and continued listing criteria under Rule 8.601-E.²⁸

The Fund's holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.²⁹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange will obtain a representation from the Adviser, prior to commencement of trading in the Shares of the Fund, that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding quotation and last sale information for the Shares.

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 believes the proposed rule change would permit listing and trading of additional actively-managed ETFs

²⁸ See note 3, *supra*.

²⁹ See note 13, *supra*.

that have characteristics different from existing actively-managed and index ETFs and would introduce additional competition among various ETF products to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act³⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.³¹

A proposed rule change filed under Rule 19b-4(f)(6)³² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³³ 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 proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.³⁴

At any time within 60 days of the filing of such 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-NYSEARCA-2023-27 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-NYSEARCA-2023-27. 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-NYSEARCA-2023-27 and should be submitted on or before April 25, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-06897 Filed 4-3-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97223; File No. PCAOB-2023-01]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Board Rule Governing Determinations Under the Holding Foreign Companies Accountable Act

March 30, 2023.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley" or the "Act"), notice is hereby given that on March 29, 2023, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On March 28, 2023, the Board adopted amendments to PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act* (collectively, the "proposed rules"). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b-4 and is available on the Board's website at <https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-050> and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

³² 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 240.19b-4(f)(6)(iii).

³⁴ 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).

³⁵ 17 CFR 200.30-3(a)(12).

in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Sarbanes-Oxley mandates that the Board inspect registered public accounting firms and investigate possible statutory, rule, and professional standards violations committed by those firms and their associated persons. That mandate applies with equal force to the Board's oversight of registered firms in the United States and in foreign jurisdictions.¹

In December 2020, recognizing the obstacles the Board has faced when attempting to conduct inspections and investigations in certain foreign jurisdictions, Congress enacted the Holding Foreign Companies Accountable Act ("HFCAA"), which amended Sarbanes-Oxley.² The HFCAA required that the Board determine whether it is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.³ The HFCAA also mandates that, after the Board makes such a determination, the Commission shall require covered issuers⁴ that retain such firms to make certain disclosures in their annual reports and, eventually, if certain conditions persist, shall prohibit trading in those issuers' securities.⁵

Following public comment, the Board adopted PCAOB Rule 6100, *Board Determinations Under the Holding Foreign Companies Accountable Act*, to establish a framework for the Board to make its determinations under the HFCAA.⁶ Rule 6100 establishes the manner of the Board's determinations; the factors the Board will evaluate and the documents and information it will

consider when assessing whether a determination is warranted; the form, public availability, effective date, and duration of such determinations; and the process by which the Board will reaffirm, modify, or vacate any such determinations.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023 ("the 2023 Appropriations Act"),⁷ amending certain provisions of Sarbanes-Oxley that relate to Board determinations under the HFCAA. As a result, the Board is amending Rule 6100 to conform to the 2023 Appropriations Act's amendment of Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.⁸

Amendments to Rule 6100(a). Consistent with the HFCAA,⁹ Rule 6100(a), as originally adopted, provided that a Board determination regarding its inability to inspect or investigate completely a registered public accounting firm could be based only on positions taken by authorities in the foreign jurisdiction where the firm was headquartered (for purposes of Rule 6100(a)(1)) or in a foreign jurisdiction where the firm had an office (for purposes of Rule 6100(a)(2)).¹⁰ Therefore, if the Board were unable to inspect or investigate a firm completely because of a position taken by an authority in a foreign jurisdiction where the firm neither was headquartered nor had an office, a determination under the HFCAA as to the firm could not be made.

The 2023 Appropriations Act amends Section 104(i)(2)(A)(ii) of Sarbanes-Oxley to allow the Board to make a determination as to a firm located in one

foreign jurisdiction based on a position taken by an authority in a different foreign jurisdiction.¹¹ The Board is amending Rule 6100(a)(1) and (a)(2) to effectuate that change by replacing "in that jurisdiction" with "in a foreign jurisdiction" at the end of both provisions.

Amendments to Rule 6100(c) and (d). Relatedly, because future Board determinations could implicate two foreign jurisdictions—one where the firm is located and another whose authorities are taking positions that render the Board unable to inspect or investigate completely—the Board is amending Rule 6100(c) and (d) to eliminate potentially ambiguous or confusing references to "the foreign jurisdiction." Specifically, the Board is deleting "in the foreign jurisdiction or any political subdivision thereof" in Rule 6100(c)(1); is replacing "any relevant authority in the foreign jurisdiction" with "any relevant foreign authority" in Rule 6100(c)(2); is replacing "the foreign authority's" with "any relevant foreign authority's" in Rule 6100(c)(3); and is deleting "located in the foreign jurisdiction" in Rule 6100(d).

Effective Date. The Board determined that the amendments to Rule 6100 take effect upon approval by the Commission. The effective date takes into consideration the statutory amendments to Sarbanes-Oxley and the limited, conforming nature of the changes to Rule 6100.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board did not solicit written comments on the proposed rules. The amendments to Rule 6100 reflect the statutory amendment to Section 104(i)(2)(A)(ii) of Sarbanes-Oxley.¹²

¹¹ See Section 301 of Division AA of the 2023 Appropriations Act (striking "the foreign jurisdiction described in clause (i)" and inserting "a foreign jurisdiction" in Section 104(i)(2)(A)(ii) of Sarbanes-Oxley).

¹² The amendments to Rule 6100 do not require "mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements" of issuers,

Continued

¹ See, e.g., Section 106(a)(1) of Sarbanes-Oxley, 15 U.S.C. 7216(a)(1).

² Public Law 116–222, 134 Stat. 1063 (Dec. 18, 2020).

³ See Section 104(i)(2)(A) of Sarbanes-Oxley, 15 U.S.C. 7214(i)(2)(A).

⁴ See Section 104(i)(1)(A) of Sarbanes-Oxley, 15 U.S.C. 7214(i)(1)(A) (defining "covered issuer").

⁵ See generally *Holding Foreign Companies Accountable Act Disclosure*, SEC Release No. 34–93701 (Dec. 2, 2021).

⁶ See *Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, PCAOB Rel. No. 2021–004 (Sept. 22, 2021); see also *Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rule Governing Board Determinations Under the Holding Foreign Companies Accountable Act*, SEC Release No. 34–93527 (Nov. 4, 2021).

⁷ See Public Law 117–328 (Dec. 29, 2022).

⁸ The other amendments to Sarbanes-Oxley in the 2023 Appropriations Act relate to the timetable for trading prohibitions. See Section 301 of Division AA of the 2023 Appropriations Act (reducing, from three years to two years, the timetable for trading prohibitions set forth in Section 104(i)(3) of Sarbanes-Oxley). Because Rule 6100 does not address the timetable for such prohibitions, no related changes to Rule 6100 are necessary.

⁹ See HFCAA § 2(i)(2)(A)(ii), 15 U.S.C. 7214(i)(2)(A)(ii) (providing that a Board determination as to a registered firm can be based only on a position taken by an authority in "the foreign jurisdiction described in clause (i)," that is, the foreign jurisdiction where a branch or office of the firm is located).

¹⁰ See PCAOB Rule 6100(a)(1) (pre-amendment) ("The Board may determine that it is unable to inspect or investigate completely registered public accounting firms headquartered in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.") (emphasis added); PCAOB Rule 6100(a)(2) (pre-amendment) ("The Board may determine that it is unable to inspect or investigate completely a registered public accounting firm that has an office that is located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.") (emphasis added).

III. Date of Effectiveness of the Proposed Rules and Timing of Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

- (A) by order approve or disapprove such proposed rules; or
- (B) institute proceedings to determine whether the proposed rules 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 rules are consistent with the requirements of Title I of 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/pcaob.shtml>); or
- Send an email to rule-comments@sec.gov. Please include PCAOB-2023-01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to PCAOB-2023-01. 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/pcaob.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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

nor do they impose any "additional requirements" on auditors. Section 103(a)(3)(C) of Sarbanes-Oxley. Accordingly, the Board has concluded that Section 103(a)(3)(C) of Sarbanes-Oxley does not apply to this rulemaking.

Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to PCAOB-2023-01 and should be submitted on or before April 25, 2023.

For the Commission by the Office of the Chief Accountant.¹³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-06961 Filed 4-3-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97218; File No. SR-MSRB-2023-02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Create New MSRB Rule G-46, on Duties of Solicitor Municipal Advisors, and To Amend MSRB Rule G-8, on Books and Records

March 29, 2023.

I. Introduction

On January 31, 2023, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to create a new rule, MSRB Rule G-46 ("Rule G-46"), on duties of solicitor municipal advisors ("Proposed Rule G-46") and amend MSRB Rule G-8 ("Rule G-8"), on books and records ("Proposed Amended Rule G-8") (together, the "proposed rule change").

The proposed rule change was published for comment in the **Federal Register** on February 14, 2023.³ The public comment period closed on March

7, 2023.⁴ The Commission received one comment letter on the proposed rule change.⁵ On March 23, 2023, the MSRB responded to the comment letter⁶ and filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").⁷ The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

As described further below, the proposed rule change consists of new Proposed Rule G-46, as modified by Amendment No. 1, and amendments to Rule G-8.

A. Solicitor Municipal Advisor Activity

There are two broad categories of municipal advisors—those that provide certain advice to or on behalf of a municipal entity or obligated person and those that undertake certain solicitations of a municipal entity or obligated person on behalf of certain third-party financial professionals.⁸ The first category of municipal advisors is often referred to as non-solicitor municipal advisors, while the latter is sometimes referred to as solicitors.⁹

⁴ The comment letter received on the proposed rule change is available on the Commission's website at <https://www.sec.gov>.

⁵ See Letter to Secretary, from Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated March 7, 2023 ("SIFMA Letter").

⁶ See Letter to Secretary, Commission, from Saliha Olgun, Interim Chief Regulatory Officer, MSRB, dated March 23, 2023 ("Response Letter").

⁷ *Id.* As described in Amendment No. 1, the MSRB stated it proposed to amend the original proposed rule change to make a change directly responsive to the comments and two other technical changes.

⁸ Exchange Act Section 15B(e)(4) generally defines "municipal advisor" to mean a person (who is not a municipal entity or an employee of a municipal entity) that (i) provides advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, and other similar matters concerning such financial products or issues; or (ii) undertakes a solicitation of a municipal entity. Additionally, the SEC has interpreted the definition of "municipal advisor" to include a person who engages in the solicitation of an obligated person acting in the capacity of an obligated person. 15 U.S.C. 78o-4(e)(4). See also Release No. 34-70462 (September 20, 2013), 78 FR 67468 (November 12, 2013) (File No. S7-45-10) at 67469, n. 138, 408; 17 CFR 240.15Ba1-1(d)(1)(i).

⁹ Exchange Act Section 15B(e)(9) generally defines "solicitation of a municipal entity or obligated person" to mean a direct or indirect communication with a municipal entity or obligated person made by a person, for direct or indirect compensation, on behalf of a broker, dealer, municipal securities dealer, municipal advisor, or

¹³ 17 CFR 200.30-11(b)(1) and (3).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Release No. 34-96842 (February 8, 2023), 88 FR 9560 (February 14, 2023) (File No. MSRB-2023-02) (the "Notice").

Proposed Rule G–46 would govern the conduct of these solicitors, more specifically defined as “solicitor municipal advisors” under Proposed Rule G–46(a)(vi).¹⁰

Although the Exchange Act¹¹ permits a municipal advisor to conduct such solicitations on behalf of a third-party broker, dealer or municipal securities dealer (collectively and individually “dealers”),¹² MSRB Rule G–38 (“Rule G–38”), on solicitation of municipal securities business, prohibits a dealer from providing or agreeing to provide payment to third parties for solicitations of municipal securities business made on behalf of the dealer.¹³ Additionally, the MSRB stated that a substantial number of solicitations that would be subject to Proposed Rule G–46 involve a solicitation on behalf of a third-party investment adviser to provide investment advisory services to a municipal entity.¹⁴ The MSRB noted that such solicitations often occur in connection with the solicitation of a public pension plan.¹⁵ For example, the MSRB offered that, if a person communicates with a public pension plan for the purpose of getting a particular investment advisory firm hired by the plan to provide investment advisory services to such plan, that person may be a solicitor municipal advisor if such person is paid by the investment advisory firm for the communication and if such person and

the investment advisory firm are not affiliated.¹⁶

The MSRB also stated the number of municipal advisors that engage in solicitations that may subject them to Proposed Rule G–46 comprise a relatively small percentage of the municipal advisors that are registered with the MSRB.¹⁷ Notwithstanding the relatively small size of such solicitation market, the MSRB argued that it is important that the fundamental protections extended to the municipal entity and obligated person clients of other MSRB-regulated entities be extended to the municipal entities and obligated persons with whom solicitor municipal advisors interact.¹⁸ Due to such increased protections contemplated by the proposed rule change, the MSRB concluded that the proposed rule change would serve as an important bulwark against potential improper practices in the municipal market and also would provide greater certainty and transparency to solicitor municipal advisors regarding regulatory expectations.¹⁹

With respect to solicitations on behalf of third parties to provide investment advisory services, the MSRB stated that there are two ways (discussed below) in which a solicitor municipal advisor typically may solicit a municipal entity: (1) directly or (2) through an intermediary.²⁰

1. Direct Solicitations

The MSRB identified that a solicitor municipal advisor often first communicates with a staff member of the solicited entity (*i.e.*, the municipal entity or obligated person) who handles investment manager research for the entity.²¹ The MSRB further described that this individual generally is responsible for evaluating the solicitor client’s product/services to ensure they are appropriate for the entity given the entity’s investment policy statement guidelines and restrictions.²² The MSRB elaborated that this first communication potentially is one of many that may span years.²³ Additionally, the MSRB further observed the solicitor municipal advisor’s client likely will have its own communications with the solicited entity, which may include board presentations, meetings and discussions

during which the solicitor municipal advisor may or may not be present.²⁴

2. Indirect Solicitations Through an Intermediary

The MSRB explained that a solicitor municipal advisor typically initially will solicit a financial intermediary or an investment consultant (collectively “intermediary”) who is hired by the solicited entity to conduct searches and identify appropriate investment managers to meet a municipal entity’s specific need.²⁵ Such intermediary itself may be a solicitor municipal advisor. According to the MSRB, when a solicitor municipal advisor first solicits the intermediary, the solicitor municipal advisor may not necessarily know who the intermediary represents (*i.e.*, whether the intermediary represents municipal entities, obligated persons, other private entities, or all of the above).²⁶ Additionally, the MSRB noted that the solicitor municipal advisor generally will not know whether the intermediary will recommend the solicitor municipal advisor’s client to the intermediary’s municipal entity client(s) (if any). As a result, at the time of the first solicitation, the MSRB stated that a solicitor municipal advisor may not know if it is indirectly soliciting a municipal entity.²⁷ The MSRB noted that moreover, the solicitor municipal advisor’s client (*e.g.*, the investment adviser) may engage in multiple subsequent communications with either the intermediary and/or the intermediary’s client (*e.g.*, the municipal entity or obligated person), during which the solicitor municipal advisor may or may not be present.²⁸ In some instances, the solicitor municipal advisor may never meet or directly communicate with an intermediary’s municipal entity or obligated person client.²⁹

B. Summary of Proposed Rule G–46

As described in further detail below and in the Notice, the MSRB stated that Proposed Rule G–46 would establish the core standards of conduct and duties of “solicitor municipal advisors” when engaging in solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors.³⁰ The MSRB also noted that Proposed Rule G–46 would codify certain statements contained in an MSRB notice issued in 2017 pertaining

investment adviser that does not control, is not controlled by, or is not under common control with the person undertaking such solicitation for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a broker, dealer, municipal securities dealer, or municipal advisor for or in connection with municipal financial products, the issuance of municipal securities, or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity. 15 U.S.C. 78o–4(e)(9).

¹⁰ Notice, 88 FR at 9561.

¹¹ See 15 U.S.C. 78o–4(e)(4) and (e)(9).

¹² See 15 U.S.C. 78c(a)(4)(a) (defining the term “broker” to mean any person engaged in the business of effecting transactions in securities for the account of others); see also 15 U.S.C. 78c(a)(5) (defining the term “dealer” to mean any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person’s own account through a broker or otherwise) and 15 U.S.C. 78c(a)(30) (defining the term “municipal securities dealer” to mean any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, subject to certain exclusions).

¹³ The prohibition in Rule G–38 predates the regulation of municipal advisors. See Release No. 34–52278 (August 17, 2005), 70 FR 49342 (August 23, 2005) (File No. MSRB–2005–04).

¹⁴ Notice, 88 FR at 9561.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Notice, 88 FR at 9562.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

to the application of MSRB rules to solicitor municipal advisors.³¹ Those statements relate to the obligation of solicitor municipal advisors under MSRB Rule G–17 (“Rule G–17”), on conduct of municipal securities and municipal advisory activities (the “G–17 Excerpt for Solicitor Municipal Advisors”).³² In addition to codifying much of the substance of the G–17 Excerpt for Solicitor Municipal Advisors, the MSRB stated that the Proposed Rule G–46 also would add additional requirements that would better align some of the obligations imposed on solicitor municipal advisors with those applicable to: non-solicitor municipal advisors under MSRB Rule G–42 (“Rule G–42”), on duties of non-solicitor municipal advisors; underwriters under Rule G–17, on fair dealing; and certain solicitations undertaken on behalf of third-party investment advisers under the SEC’s marketing rule for investment advisers (the “IA Marketing Rule” or “IA Rule 206(4)–1”).³³

In summary, the MSRB stated that the core provisions of Proposed Rule G–46 generally would:

- Set forth definitions for terms used in the proposed rule;³⁴
- Require solicitor municipal advisors to provide to their solicitor clients full and fair disclosure in writing of all of their material conflicts of interest and material legal or disciplinary events;³⁵
- Require solicitor municipal advisors to document their relationships in writing(s), deliver such writing(s) to their solicitor clients, and set forth certain minimum content that must be included in such writing(s);³⁶
- Prohibit solicitor municipal advisors from making a representation that the solicitor municipal advisor knows or should know is either materially false or misleading regarding the capacity, resources or knowledge of the solicitor client and require solicitor municipal advisors to have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client;³⁷
- Require solicitor municipal advisors to disclose to solicited entities

material facts about the solicitation, including but not limited to an obligation to disclose information about the solicitor municipal advisor’s role and compensation, the solicitor municipal advisor’s material conflict of interest; and information regarding the solicitor client;³⁸

- Set forth a dual disclosure standard with respect to required disclosures to solicited entities;³⁹ and
- Expressly prohibit solicitor municipal advisors from: delivering an inaccurate invoice for fees or expenses and making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities subject to exceptions specified in the rule.⁴⁰

The MSRB stated that the supplementary material to Proposed Rule G–46 generally would:

- Provide additional explanation regarding the MSRB’s expectations with respect to the reasonable basis a solicitor municipal advisor must have for certain of its representations;⁴¹
- Explain the relationship between a solicitor municipal advisor’s fair dealing obligations and a federal fiduciary duty for municipal advisors;⁴²
- Explain the relationship between a municipal advisor’s obligations under Proposed Rule G–46 and Rule G–42;⁴³ and
- Provide additional explanation applicable to a solicitor municipal advisor’s obligation to document its compensation arrangement and make related disclosures.⁴⁴

1. Definitions

The MSRB explained that Proposed Rule G–46(a) would set forth a set of definitions for terms used in the rule.⁴⁵ In the proposed rule change, the MSRB would define the terms “compensation,”⁴⁶ “excluded communications,”⁴⁷ “solicitation,”

“solicited entity,” “solicitor client,” “solicitor municipal advisor,” and “solicitor relationship.”⁴⁸ As detailed below, the MSRB identified that several of these definitions are integral to understanding nearly all of the provisions of Proposed Rule G–46, and the MSRB discussed each of these definitions in fuller detail and context.

The MSRB noted that Proposed Rule G–46(a)(iii) generally would define the term “solicitation” to mean a direct or indirect communication with a municipal entity or obligated person made by a solicitor municipal advisor, for direct or indirect compensation, on behalf of a municipal advisor or investment adviser that does not control, is not controlled by, or is not under common control with the solicitor municipal advisor for the purpose of obtaining or retaining an engagement by a municipal entity or obligated person of a municipal advisor for or in connection with municipal financial products or the issuance of municipal securities or of an investment adviser to provide investment advisory services to or on behalf of a municipal entity; provided, however, that it does not include excluded communications, as defined in Proposed Rule G–46(a)(ii).⁴⁹ The MSRB stated that this definition is consistent with the defined term “solicitation of a municipal entity or obligated person” under Exchange Act Section 15B(e)(9), except to the extent that the term “solicitation” under Proposed Rule G–46(a)(iii) does not address solicitations undertaken on behalf of a third-party dealer.⁵⁰ The

retaining an engagement that is not in connection with the issuance of municipal securities or with respect to municipal financial products; and (D) direct or indirect communications made for the purpose of obtaining or retaining an engagement for or in connection with municipal financial products that are investment strategies to the extent that those investment strategies are not plans or programs for the investment of the proceeds of municipal securities or the recommendation of and brokerage of municipal escrow investments. Notice, 88 FR at 9563, n.18. The term “excluded communications” is used in the term “solicitation,” which would be defined in Proposed Rule G–46(a)(iii). *Id.*

⁴⁸ Notice, 88 FR at 9563. Proposed Rule G–46(a)(vii) generally would provide that, for purposes of the rule, a “solicitor relationship” is deemed to exist when a municipal advisor enters into an agreement to undertake a solicitation of a municipal entity or obligated person within the meaning of Exchange Act Section 15B(e)(9) and the rules and regulations thereunder. Notice, 88 FR at 9563, n.19. The solicitor relationship shall be deemed to have ended on the date which is the earlier of (i) the date on which the solicitor relationship has terminated pursuant to the terms of the documentation of the solicitor relationship required by Proposed Rule G–46(c) or (ii) the date on which the solicitor municipal advisor withdraws from the solicitor relationship. *Id.*

⁴⁹ Notice, 88 FR at 9563.

⁵⁰ *Id.*; 15 U.S.C. 78o–4(e)(9).

³¹ See MSRB Regulatory Notice 2017–08, Application of MSRB Rules to Solicitor Municipal Advisors (May 4, 2017), available at <https://www.msrb.org/sites/default/files/2017-08.pdf> (“Regulatory Notice 2017–08”).

³² Notice, 88 FR at 9562.

³³ 17 CFR 275.206(4)–1; Notice, 88 FR at 9562.

³⁴ Notice, 88 FR at 9562.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Notice, 88 FR at 9563.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* Proposed Rule G–46(a)(i) generally would provide that “compensation” means any cash, in-kind or non-cash remuneration, including but not limited to merchandise, gifts, travel expenses, meals and lodging. Notice, 88 FR at 9563, n.17.

⁴⁷ Notice, 88 FR at 9563. Proposed Rule G–46(a)(ii) generally would provide that “excluded communications” means (A) advertising by a dealer, municipal advisor, or investment adviser; (B) direct or indirect communications with an obligated person if such obligated person is not acting in the capacity of an obligated person; (C) direct or indirect communications with an obligated person made for the purpose of obtaining or

MSRB stated that because Rule G–38 generally prohibits a dealer from providing or agreeing to provide payment to third parties for solicitations of municipal securities business made on behalf of the dealer, Proposed Rule G–46 assumes that such solicitations do not occur.⁵¹

The MSRB wrote that Proposed Rule G–46(a)(iv) generally would define the term “solicited entity” to mean any municipal entity or obligated person (as those terms are defined in Exchange Act Sections 15B(e)(8) and (e)(10)⁵² and the rules and regulations thereunder) that the solicitor municipal advisor has solicited, is soliciting or intends to solicit within the meaning of Exchange Act Sections 15B(e)(4)(A)(ii) and (e)(9)⁵³ and the rules and regulations thereunder.⁵⁴

The MSRB generally defined “solicitor client” in Proposed Rule G–46(a)(v) to mean the municipal advisor or investment adviser on behalf of whom the solicitor municipal advisor undertakes a solicitation within the meaning of Exchange Act Sections 15B(e)(4)(A)(ii) and (e)(9)⁵⁵ and the rules and regulations thereunder.⁵⁶ As the MSRB previously noted, Proposed Rule G–46 presumes that solicitors do not conduct paid solicitations on behalf of third-party dealers because of the prohibition set forth in Rule G–38.⁵⁷ As a result, the MSRB noted that Proposed Rule G–46(a)(v)’s definition of “solicitor client” does not include dealers as solicitor clients.⁵⁸

The MSRB generally defined “solicitor municipal advisor” in Proposed Rule G–46(a)(vi) to mean, for purposes of the rule, a municipal advisor within the meaning of Exchange Act Section 15B(e)(4)⁵⁹ and other rules and regulations thereunder.⁶⁰ The MSRB further provided that Proposed Rule G–46(a)(vi) shall exclude a person that is otherwise a municipal advisor solely based on activities within the meaning of Exchange Act Section 15B(e)(4)(A)(i)⁶¹ and the rules and regulations thereunder.⁶² The MSRB stated that, generally, this means that a solicitor municipal advisor is any

municipal advisor that is not a non-solicitor municipal advisor.⁶³

2. Disclosure to Solicitor Clients

The MSRB noted that its Proposed Rule G–46(b) would require a solicitor municipal advisor to provide to a client full and fair disclosure in writing of all material conflicts of interest and any legal or disciplinary event that would be material to a reasonable solicitor client’s evaluation of the solicitor municipal advisor or the integrity of its management or advisory personnel.⁶⁴ Further, the MSRB stated that these disclosures must be provided prior to or upon engaging in municipal advisory activities.⁶⁵

The MSRB stated that the Proposed Rule G–46(b) sets forth an alternative to providing a narrative description of any such legal or disciplinary events by permitting solicitor municipal advisors to reference such information in certain other publicly available information if the conditions specified in the rule are met.⁶⁶ As a result, the MSRB posited, solicitor municipal advisors (that are also registered broker-dealers or investment advisers) would be permitted to identify the specific type of event and make specific reference to the relevant portions of the solicitor municipal advisor’s Form BD or Form ADV if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms.⁶⁷ The MSRB noted that all other municipal advisors would be permitted to identify the specific type of event and make specific reference to the relevant portions of the solicitor municipal advisor’s most recent Forms MA or MA–I filed with the Commission if the solicitor municipal advisor provides detailed information specifying where the client may electronically access such forms.⁶⁸

3. Documentation of the Solicitor Relationship

The MSRB explained that Proposed Rule G–46(c) would require a solicitor municipal advisor to evidence each of its solicitor relationships by a writing or

writings created and delivered to the solicitor client prior to, upon or promptly after the establishment of the solicitor relationship.⁶⁹ The writing(s) would be required to be dated and include, at a minimum:

- a description of the solicitation activities to be engaged in by the solicitor municipal advisor on behalf of the solicitor client (including the scope of the agreed-upon activities and a statement that the scope of the solicitation is anticipated to include the solicitation of municipal entities and/or obligated persons);⁷⁰
- the terms and amount of the compensation to be received by the solicitor municipal advisor for such activities;⁷¹
- the date, triggering event, or means for the termination of the relationship, or, if none, a statement that there is none;⁷² and
- any terms relating to withdrawal from the relationship.⁷³

The MSRB stated that the proposed obligation to document the relationship is generally consistent with a non-solicitor municipal advisor’s obligation to document its municipal advisory relationship with a client under Rule G–42(c).⁷⁴ The MSRB argued that this documentation obligation will help ensure that the solicitor client has certain basic material information about the engagement including the scope of agreed-upon activities and information pertaining to compensation for such activities.⁷⁵ The MSRB also posited that this documentation obligation will assist examining authorities in understanding the solicitation arrangement and will provide them with necessary information to assist in evaluating a solicitor municipal advisor’s compliance with relevant obligations.⁷⁶

The MSRB stated that a solicitor may be asked to solicit a broad range of entities on behalf of a client of the solicitor.⁷⁷ These entities may include municipal entities, obligated persons and corporate entities that are not

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* Rule G–42(c) generally requires a municipal advisor to evidence each of its municipal advisory relationships by a writing or writings created and delivered to the municipal entity or obligated person client prior to, upon or promptly after the establishment of the municipal advisory relationship. Notice, 88 FR at 9564, n.28.

⁷⁵ Notice, 88 FR at 9564.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁵¹ Notice, 88 FR at 9563.

⁵² 15 U.S.C. 78o–4(e)(8) and (e)(10).

⁵³ 15 U.S.C. 78o–4(e)(4)(A)(ii) and (e)(9).

⁵⁴ Notice, 88 FR at 9563.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 15 U.S.C. 78o–4(e)(4).

⁶⁰ Notice, 88 FR at 9563.

⁶¹ 15 U.S.C. 78o–4(e)(4)(A)(i).

⁶² Notice, 88 FR at 9563.

⁶³ *Id.*

⁶⁴ Notice, 88 FR at 9563–64.

⁶⁵ Notice, 88 FR at 9564.

⁶⁶ *Id.*

⁶⁷ *Id.* For example, a solicitor municipal advisor could direct a solicitor client to FINRA’s BrokerCheck system or the Investment Adviser Public Disclosure website, as applicable; provided, that the direction is accompanied by information as to how to retrieve the firm’s specific Form BD or Form ADV and specific reference to the relevant portions of the applicable form. Notice, 88 FR at 9564, n.26.

⁶⁸ Notice, 88 FR at 9564.

obligated persons.⁷⁸ Although the MSRB observed that the solicitation of municipal entities and obligated persons generally would require compliance with Proposed Rule G–46 (to the extent the solicitation would make the solicitor a “municipal advisor”), the MSRB concluded that the solicitation of an entity that is not a municipal entity or an obligated person would not require such compliance.⁷⁹ The MSRB stated that in order to promote certainty as to the applicable regulatory scheme for any engagement, that it is imperative for any engagement to be documented in a writing that clearly indicates whether the solicitation of municipal entities and/or obligated persons is anticipated.⁸⁰ The MSRB also concluded that information pertaining to termination of the relationship or withdrawal from the relationship will similarly assist both solicitor clients and examination and enforcement authorities in understanding the scope of an engagement.⁸¹

The MSRB stated that Supplementary Material .04 to Proposed Rule G–46 would provide additional guidance with respect to the obligation to document the terms and the amount of compensation to be received.⁸² Specifically, the MSRB provided that such guidance provides that the documentation(s) must clearly describe the structure of the compensation arrangement and the amount of compensation paid or to be paid.⁸³

4. Representations to Solicited Entities

The MSRB explained that Proposed Rule G–46(d)(i) expressly would prohibit a solicitor municipal advisor from making a representation that the solicitor municipal advisor knows or should know is either materially false or materially misleading due to the omission of a material fact about the capacity, resources, or knowledge of the solicitor client.⁸⁴ The MSRB stated that this prohibition is similar to a prohibition applicable to non-solicitor municipal advisors under Rule G–42 except that, unlike with Rule G–42, the prohibition for solicitor municipal advisors would not be limited to representations that occur in response to requests for proposals or qualifications or in oral presentations to a client or prospective client for the purpose of

obtaining or retaining an engagement for the solicitor client.⁸⁵ The MSRB explained this assertion by offering its belief that all of the solicitor municipal advisor’s communications regarding the capacity, resources or knowledge of the solicitor’s clients are expected to be for the purpose of obtaining or retaining an engagement for their clients.⁸⁶

The MSRB wrote that Proposed Rule G–46(d)(ii) would require a solicitor municipal advisor to have a reasonable basis for any material representations it makes to a solicited entity regarding the capacity, resources, or knowledge of the solicitor client.⁸⁷ The MSRB noted that solicited entities should be entitled to rely on the material representations made by solicitor municipal advisors, as regulated financial professionals hired for the purpose of soliciting business on behalf of their clients, with respect to the qualifications of their clients.⁸⁸ The MSRB further asserted that such representations should have some reasonable basis.⁸⁹

The MSRB stated that Supplementary Material .01 would provide guidance on compliance with the reasonable-basis standard.⁹⁰ Specifically, the MSRB stated that this supplementary material would clarify that while a solicitor municipal advisor must have a reasonable basis for the representations described in Proposed Rule G–46(d), the solicitor municipal advisor is not required to actively seek out every piece of information that may be relevant to such representations.⁹¹

5. Disclosures to Solicited Entities

The MSRB’s Proposed Rule G–46(e) would require a solicitor municipal advisor to disclose to any solicited entity all material facts about the solicitation in the manner specified in section (f) of the proposed rule.⁹² The MSRB wrote that this proposed change would include an obligation to disclose

certain information pertaining to the solicitor municipal advisor’s: (i) role and compensation; (ii) conflicts of interest; and (iii) client.⁹³

i. Role and Compensation Disclosures

The MSRB stated that Proposed Rule G–46(e)(i) would require a solicitor municipal advisor to disclose to any solicited entity the solicitor municipal advisor’s name; the solicitor client’s name; the type of business being solicited (*i.e.*, municipal advisory business or investment advisory services); the material terms of the solicitor municipal advisor’s compensation arrangement, including a description of the compensation provided or to be provided, directly or indirectly, to the solicitor municipal advisor for such solicitation; and payments made by the solicitor municipal advisor to another solicitor municipal advisor to facilitate the solicitation.⁹⁴

The MSRB stated that Supplementary Material .04 would provide additional guidance with respect to the obligation to disclose the material terms of the solicitor municipal advisor’s compensation arrangement.⁹⁵ Specifically, the MSRB noted that Proposed Rule G–46(e)(i)(D) would require disclosure of at least the same information as that required by Proposed Rule G–46(c)(ii), to the extent material.⁹⁶ However, Proposed Rule G–46(e)(i)(D) also may require the disclosure of additional information, depending on the facts and circumstances. For example, if the solicitor municipal advisor receives indirect compensation for the solicitation, information pertaining to the indirect compensation also must be disclosed.⁹⁷

Additionally, the solicitor municipal advisor would be required to disclose the following statements:

- In connection with its solicitation activities as a municipal advisor, a solicitor municipal advisor does not owe a fiduciary duty under Section 15B(c)(i) of the Exchange Act⁹⁸ or MSRB rules to the entities that it solicits and is not required by those provisions to act in the best interests of such entities without regard to the solicitor municipal advisor’s own financial or other interests. However, in connection with such solicitation activities, a solicitor municipal advisor is required

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Notice, 88 FR at 9564–65.

⁸⁷ Notice, 88 FR at 9565.

⁸⁸ *Id.*

⁸⁹ *Id.* The MSRB noted that this obligation bears some analogy to a non-solicitor municipal advisor’s duty of care obligation to have a reasonable basis for any advice provided to or on behalf of a client pursuant to Rule G–42, Supplementary Material .01. Notice, 88 FR at 9565, n.30. While a non-solicitor municipal advisor provides advice to or on behalf of its municipal entity and obligated person clients, the MSRB stated that a solicitor municipal advisor solicits municipal entities and obligated persons on behalf of its clients. The MSRB concluded that, in both cases, the municipal advisor would be required to have a reasonable basis for what are likely to be the core material statements the municipal advisor was hired to provide to municipal entities and obligated persons. *Id.*

⁹⁰ Notice, 88 FR at 9565.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

to deal fairly with all persons, including both solicited entities and the solicitor municipal advisor's clients;⁹⁹ and

- A solicitor municipal advisor's primary role is to solicit the solicited entity on behalf of certain third-party regulated entities and the solicitor municipal advisor will be compensated for its solicitation services by the solicitor municipal advisor's client.¹⁰⁰

The MSRB stated that these statements draw from analogous disclosures that underwriters must make to their issuer clients pursuant to Rule G-17,¹⁰¹ but are tailored to reflect the existence of a federal fiduciary duty for non-solicitor municipal advisors and to make clear that a solicitor municipal advisor's fair dealing obligations apply in connection with its solicitation activities.¹⁰²

The MSRB stated that Supplementary Material .02 to Proposed Rule G-46 would expound on the relationship between Proposed Rule G-46 and the fair dealing obligation under Rule G-17 and includes similar discussion regarding application of the federal fiduciary duty to a solicitor municipal advisor's solicitations of solicited entities.¹⁰³ The MSRB clarified, however, that this proposed change would specify that solicitor municipal advisors may be subject to fiduciary or other duties under state or other laws and that nothing in Proposed Rule G-46 shall be deemed to supersede any more restrictive provision of state or other laws applicable to municipal advisory activities.¹⁰⁴ Finally, the MSRB described that Supplementary Material .02 would include a cross reference to Supplementary Material .03 and would remind solicitor municipal advisors that, to the extent they also engage in non-solicitor municipal advisory

activity, the requirements of Rule G-42 will apply with respect to such activity and a federal fiduciary duty will apply with respect to the municipal entity clients of the municipal advisor.¹⁰⁵

ii. Conflicts Disclosures

The MSRB stated that Proposed Rule G-46(e)(ii) would require a solicitor municipal advisor to disclose any material conflicts of interest, including but not limited to the fact that, because the solicitor municipal advisor is compensated for its solicitation efforts, it has an incentive to recommend its clients, resulting in a material conflict of interest.¹⁰⁶ The MSRB noted that a solicitor municipal advisor also would be required to disclose any material conflicts of interest, of which the solicitor municipal advisor is aware after reasonable inquiry that could reasonably be anticipated to impair the solicitor municipal advisor's ability to solicit the solicited entity in accordance with its duty of fair dealing.¹⁰⁷ The MSRB stated that this obligation is comparable to a non-solicitor municipal advisor's obligation under Rule G-42 to disclose to its clients all material conflicts of interest, including any conflicts, of which the municipal advisor is aware after reasonable inquiry, that could reasonably be anticipated to impair the municipal advisor's ability to provide advice to or on behalf of the client in accordance with the standards set forth in the rule.¹⁰⁸ The MSRB observed that this proposed change is comparable to the obligation under the IA Marketing Rule to disclose that a promoter, due to the fact that it is compensated, has an incentive to recommend the investment adviser it promotes, resulting in a material conflict of interest.¹⁰⁹ The MSRB concluded that disclosure of such conflict-of-interest information is key to assisting a solicited entity in evaluating the solicitor municipal advisor's statements and in determining whether to retain the solicitor's client.¹¹⁰ In Amendment No. 1., the MSRB corrected a typographical error (*i.e.*, remove an

errant “s” from the rule text) in proposed Rule G-46(e)(ii).¹¹¹

iii. Solicitor Client Disclosures

The MSRB wrote that Proposed Rule G-46(e)(iii) would require a solicitor municipal advisor to provide to the solicited entity the following information regarding the solicitor client the type of information that is generally available on Form MA (in the case of a municipal advisor client) or Form ADV, Part 2 (in the case of an investment adviser client) or Form ADV, Part 2 (in the case of an investment adviser client); and a description of how the solicited entity can obtain a copy of the solicitor client's Form MA or Form ADV, Part 2, as applicable.¹¹²

The MSRB stated that these requirements are designed to help ensure that, at any early stage, solicited entities are directed to important written information about the entities the solicitor municipal advisor represents—including, but not limited to, information about the disciplinary history of the solicitor municipal advisor's clients.¹¹³ However, the MSRB provided that it does not require solicitor municipal advisors to obtain a copy of these documents and provide them to their solicited entities, nor does it require a solicitor municipal advisor to disclose any specific information about the client that is included in such forms.

6. Timing and Manner of Disclosures to Solicited Entities

The MSRB explained that Proposed Rule G-46(f), as modified by Amendment No. 1., would provide that any disclosures required under section (e) of the proposed rule (pertaining to disclosures to solicited entities) must be made in writing.¹¹⁴ The MSRB also noted the proposed rule would provide for a dual-disclosure requirement, such that solicitations that result in a solicited entity engaging a solicitor client would receive the requisite disclosures twice.¹¹⁵ Specifically, the MSRB explained that the solicited entity would receive the disclosures once at the time of the first communication giving rise to the solicitation and again at the time that engagement documentation pertaining to the solicited entity's engagement of the solicitor client is delivered (or promptly thereafter).¹¹⁶

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ More specifically, the MSRB explained that these disclosures include an obligation to disclose that: Rule G-17 requires an underwriter to deal fairly at all times with both issuers and investors; unlike a municipal advisor, the underwriter does not have a fiduciary duty to the issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the issuer without regard to its own financial or other interests; and the underwriter's primary role is to purchase securities with a view to distribution in an arm's-length commercial transaction with the issuer and it has financial and other interests that differ from those of the issuer. Notice, 88 FR at 9565, n.32; see MSRB Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (March 31, 2021) (the “G-17 Underwriter's Guidance”), available at <https://www.msrb.org/Interpretive-Notice-Concerning-Application-MSRB-Rule-G-17-Underwriters-Municipal-Securities>.

¹⁰² Notice, 88 FR at 9565.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Notice, 88 FR at 9565–66.

¹⁰⁷ Notice, 88 FR at 9566.

¹⁰⁸ *Id.*; see Rule G-42(b)(i)(F).

¹⁰⁹ Notice, 88 FR at 9566.

¹¹⁰ The MSRB offered the example that, without a specific disclosure about a solicitor municipal advisor's incentives, a solicitation creates a risk that the solicited entity would mistakenly view the solicitor municipal advisor's recommendation as being an unbiased opinion about the solicitor client's ability to, for example, manage the solicited entity's assets, and would rely on that recommendation more than the solicited entity otherwise would if the solicited entity knew of the solicitor municipal advisor's incentive. *Id.*

¹¹¹ Amendment No. 1.

¹¹² Notice, 88 FR at 9566.

¹¹³ *Id.*

¹¹⁴ *Id.* See also Amendment No. 1.

¹¹⁵ Notice, 88 FR at 9566.

¹¹⁶ *Id.*

i. Initial Disclosure at the Time of the First Communication

The MSRB stated that the disclosures would be required to be delivered at the time of the first communication (as that term is used in the definition of “solicitation”) with a solicited entity on behalf of a specific solicitor client.¹¹⁷ Specifically, the MSRB wrote that the disclosures would be required to be provided to the solicitor client representative with whom such communication is made. In the case of an indirect solicitation—a solicitation of an intermediary who represents a municipal entity or obligated person—the MSRB expounded that disclosures must be provided to the intermediary with whom such communication is made.¹¹⁸ In Amendment No. 1, the MSRB made a technical correction to state that, at the time of such first direct communication with a solicited entity on behalf of a specific solicitor client, the requisite disclosures must be provided to the solicited entity representative (rather than the solicitor client representative as set forth in the Notice) with whom such communication is made.¹¹⁹ Amendment No. 1 also corrected an errant cross-reference in proposed Rule G–46(f)(i)

ii. Second Disclosure at the Time of the Solicitor Client’s Engagement With the Solicited Entity

The MSRB noted that if the solicitation results in a solicited entity engaging a solicitor client for investment advisory services or municipal advisory services, all disclosures required by Proposed Rule G–46(e) would be required to be provided at the time that such engagement documentation is delivered to the solicited entity or promptly thereafter.¹²⁰ The MSRB concluded that this is the case even if there are no changes between the initial set of disclosures and the second set of disclosures.¹²¹

The MSRB also described that the second set of disclosures may be provided by either the solicitor client or the solicitor municipal advisor.¹²² The MSRB wrote that this flexibility would permit, for example, a solicitor municipal advisor’s investment adviser client to provide the solicitor’s disclosures to the solicited entity at the time that the investment adviser enters into an engagement with the solicited

entity.¹²³ Further, the MSRB noted that these disclosures would be required to be made to an official of the solicited entity that: (1) the solicitor municipal advisor (or, the solicitor client, if the solicitor client provides such disclosures) reasonably believes has the authority to bind the solicited entity by contract; and (2) is not a party to a disclosed conflict.¹²⁴ The MSRB explained that these two conditions would not apply to the initial delivery of disclosures.¹²⁵

The MSRB stated that this dual or bifurcated approach would help ensure that the person that is initially solicited receives this key information in time to consider it in connection with the initial solicitation.¹²⁶ However, the MSRB explained that, because such person(s) may not have the authority to bind the solicited entity by contract (particularly where such person is an intermediary between the solicitor and the solicited entity), the MSRB would require the disclosures to be provided again at the time of the engagement between the solicited entity and the solicitor client (or promptly thereafter).¹²⁷ The MSRB posited that any risk associated with the first disclosures not being passed on to a knowledgeable person with the authority to bind the solicited entity in contract would be mitigated by requiring that the disclosures are provided again at the time of the engagement—this time, to someone who does have such authority.¹²⁸ Additionally, the MSRB noted that the MSRB has observed that solicitations may sometimes span years, and particularly in such instances, the MSRB concluded that it is important that the solicited entity receives the disclosures again at the time of the solicitor client’s engagement with the solicited entity.¹²⁹

7. Specified Prohibitions

The MSRB stated that Proposed Rule G–46(g) expressly would prohibit a solicitor municipal advisor from delivering an invoice for fees or expenses for municipal advisory activities that is materially inaccurate in its reflection of the activities actually performed or the personnel that actually performed those activities; and making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities.¹³⁰

Specifically, the MSRB wrote that solicitor municipal advisors would be prohibited from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities other than:

- payments to an affiliate for a direct or indirect communication with a municipal entity or obligated person on behalf of the solicitor municipal advisor where such communication is made for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;¹³¹
- reasonable fees paid to another municipal advisor registered as such with the Commission and the MSRB for making a communication for the purpose of obtaining or retaining an engagement to perform municipal advisory activities;¹³² and
- payments that are permissible “normal business dealings” as described in Rule G–20, on gifts, gratuities, non-cash compensation and expenses of issuance.¹³³

The MSRB explained that that these specified prohibitions are modeled on similar prohibitions applicable to non-solicitors under Rule G–42(e)(i) and to a lesser degree would align with certain prohibitions applicable to underwriters under the G–17 Underwriter’s Guidance.¹³⁴

In Amendment No. 1 the MSRB proposed to correct an errant internal cross-reference in Proposed Rule G–46(g)(ii).¹³⁵

C. Proposed Rule G–46 Supplementary Material

Proposed Rule G–46 would set forth four supplementary material sections:

- Providing additional explanation regarding the MSRB’s expectations with respect to the reasonable basis a solicitor municipal advisor must have for the representations described in Proposed Rule G–46(d);¹³⁶
- Explaining the relationship between a solicitor municipal advisor’s fair dealing obligations and the applicability of a federal fiduciary duty for municipal advisors;¹³⁷
- Explaining the relationship between a municipal advisor’s obligations under Proposed Rule G–46 and Rule G–42;¹³⁸ and

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* See Rule G–42(e)(i); see also G–17 Underwriter’s Guidance at section titled, “Underwriter Compensation and New Issue Pricing.”

¹³⁵ Amendment No. 1.

¹³⁶ Notice, 88 FR at 9567.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Amendment No. 1.

¹²⁰ Notice, 88 FR at 9566.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Notice, 88 FR at 9566–67.

¹²⁵ Notice, 88 FR at 9567.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

- Providing additional detail regarding a solicitor municipal advisor's compensation documentation and disclosure obligations.¹³⁹

The MSRB stated that Supplementary Material .03 explains that municipal advisors should be mindful that one may be, simultaneously, both a solicitor municipal advisor for purposes of Proposed Rule G-46 and a non-solicitor municipal advisor for purposes of Rule G-42.¹⁴⁰ For example, the MSRB explained that a municipal advisor may provide "advice" as defined in Rule G-42 to a municipal entity (the "advisory engagement") and separately may act as a solicitor municipal advisor with respect to that same municipal entity or another municipal entity as contemplated in Proposed Rule G-46 (the "solicitor municipal advisor engagement").¹⁴¹ The MSRB wrote that the municipal advisor would be subject to Rule G-42 with respect to the advisory engagement and would be subject to Proposed Rule G-46 with respect to the solicitor municipal advisor engagement.¹⁴² The MSRB stated that municipal advisors should evaluate the activity undertaken with respect to each engagement to determine which rule governs and ensure the written supervisory procedures required under Rule G-44 reflect such.¹⁴³

D. Proposed Amendments to MSRB Rule G-8

The MSRB explained that proposed amendments to Rule G-8 would add specific recordkeeping obligations designed to help facilitate and document compliance with Proposed Rule G-46. Specifically, the MSRB stated that these amendments would add new subsection (viii) requiring solicitor municipal advisors to make and keep the following books and records:¹⁴⁴

- evidence that the disclosures required by Proposed Rule G-46(b) were made in the manner required by that section;¹⁴⁵
- a copy of each writing or writings required by Proposed Rule G-46(c);¹⁴⁶
- documentation substantiating the solicitor municipal advisor's reasonable basis for believing its representations as described in Proposed Rule G-46(d) (e.g., a checklist confirming that an

investment adviser client's Form ADV was reviewed);¹⁴⁷ and

- evidence that the disclosures required by Proposed Rule G-46(e) were made in the manner described in Proposed Rule G-46(f) (e.g., automatic email delivery receipt).¹⁴⁸

III. Summary of Comment Received and MSRB's Response

The Commission received one comment letter on the proposed rule change, as well as response from the MSRB to this comment letter. As more fully described below, the SIFMA Letter argued that the proposed MSRB Rule G-46 is unclear and unworkable in several areas, and therefore, urged the SEC to disapprove the proposed rule.¹⁴⁹ The MSRB's Response Letter responded directly to each of these points.¹⁵⁰

Avoiding Unnecessary Regulation

SIFMA explained that its members believe that the proposed rule change is confusing and unnecessary, as many solicitor municipal advisors are already regulated by the SEC pursuant to the Investment Advisers Act.¹⁵¹ SIFMA also reiterated a request for the MSRB to prohibit municipal advisors from paying third-party municipal advisors for a solicitation of municipal advisory business.¹⁵² Finally, SIFMA warned that solicitation of municipal advisors could "create material conflict of interest," and thereby, create circumstances leading to corruption that "could be damaging to the integrity of the municipal securities market."¹⁵³

In its Response Letter, the MSRB stated that the proposed rule change is designed to harmonize with relevant rules under comparative regimes, including the regime for investment advisers.¹⁵⁴ The MSRB also indicated that the MSRB does not believe that the fact that some solicitor municipal advisors are also investment advisers obviates the need for regulation in their capacity as solicitor municipal advisors.¹⁵⁵ Further, the MSRB responded to SIFMA's conflict of interest concerns by noting that, among other things, the proposed rule change is designed to address these material conflicts of interest and to provide some guardrails around such solicitation activities.¹⁵⁶ The MSRB concluded that

the proposed rule change's approach (as opposed to the outright prohibition on paying solicitor municipal advisors for their third-party solicitations of municipal advisory business) is consistent with the apparent intent in the Dodd-Frank Act in granting rulemaking authority to the MSRB over such conduct.¹⁵⁷

Inadvertent Solicitations

SIFMA further indicated that a safe harbor for inadvertent solicitations is warranted because there confusion exists as to what disclosures are due to which parties and when.¹⁵⁸

In response to SIFMA's concern, the MSRB explained that, as described in Amendment No. 1, the MSRB made a technical correction to the proposed rule change to correct a typographical error in Proposed Rule G-46(f)(i)(A) that it believes may have inadvertently contributed to any confusion.¹⁵⁹ The MSRB identified that Amendment No. 1's revisions clarify that, at the time of the first direct communication with a solicited entity on behalf of a specific solicitor client, the requisite disclosures must be provided to the solicited entity representative (rather than the solicitor client representative as set forth in the Notice) with whom such communication is made.¹⁶⁰ Further, the MSRB explained that this prose is consistent with the heading of section (f) of Proposed Rule G-46 (titled "Timing and Manner of Disclosures to Solicited Entities").¹⁶¹

The MSRB described that the dual disclosure obligation set forth in the proposed rule change require the following. For direct solicitations of a solicited entity by a solicitor municipal advisor, the MSRB stated that, at the time of the first solicitation, the solicitor municipal advisor would be required to make the disclosures required by Proposed Rule G-46(e) to the solicited entity representative (i.e., the person actually solicited, such as an employee of the solicited entity).¹⁶² The MSRB also noted that, if that solicitation results in the solicited entity engaging the solicitor client for investment advisory services or municipal advisory services, all disclosures required by Proposed Rule G-46(e) would be required to be provided again at the time that such engagement documentation is delivered to the solicited entity or promptly

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ SIFMA Letter at 1.

¹⁵⁰ See Response Letter.

¹⁵¹ SIFMA Letter at 2.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Response Letter at 2.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ SIFMA Letter at 2.

¹⁵⁹ Response Letter at 2.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Response Letter at 2-3.

thereafter.¹⁶³ The MSRB wrote that the same standard would apply for indirect solicitations, except for the fact that, at the time of the first solicitation, the disclosures would be required to be provided to the intermediary with whom such communication is made.¹⁶⁴

The MSRB stated that a solicitor municipal advisor may make multiple solicitations of a solicited entity (sometimes spanning more than one year) before a solicitation may result in a solicited entity engaging a solicitor client.¹⁶⁵ As a result, the MSRB concluded that it is important that the disclosures set forth in Proposed Rule G-46(e) are provided twice—once in connection with the initial solicitation so that the solicitee can appropriately evaluate the disclosures in connection with the solicitation and again at the time of the relevant engagement when an official that is reasonably believed to have the authority to bind the solicited entity by contract is guaranteed to receive the disclosures.¹⁶⁶

Next, the MSRB asserted that, pursuant to Sections 15B(e)(4)(ii) and (e)(9) of the Exchange Act,¹⁶⁷ one meets the definition of a “municipal advisor” if, in relevant part, one undertakes a direct or indirect communication with a municipal entity or obligated person.¹⁶⁸ Consequently, the MSRB deemed it consistent with a regulated entity’s supervisory and compliance obligations to expect regulated entities to be cognizant of their communications and to put into place appropriate processes to help them ascertain whether or not they are engaging in municipal advisory activity.¹⁶⁹ The MSRB explained that, in the context of third-party solicitations, one such mechanism may be to inquire of intermediaries whether they represent municipal entities or obligated persons.¹⁷⁰ The MSRB also noted that nothing would prohibit a solicitor municipal advisor from, out of an abundance of caution, providing the disclosures specified in Proposed Rule G-46(e) to all intermediaries that the solicitor municipal advisor solicits.

After careful consideration, the MSRB stated that a safe harbor for inadvertent solicitations is not warranted. The MSRB explained that, consistent with the definition of “municipal advisor” under the Exchange Act, to trigger the application of Proposed Rule G-46, a

solicitor municipal advisor must undertake the relevant solicitation “for the purpose of obtaining or retaining” an engagement between the solicited entity and the solicitor client.¹⁷¹ Because this requires affirmative intent, the MSRB deemed that a provision for “inadvertent” solicitations is not appropriate.¹⁷² To that end, the MSRB concluded that the example set forth in the SIFMA Letter would subject a firm to Proposed Rule G-46. If a firm initially solicits a solicited entity on its own behalf, but the solicited entity unilaterally chooses not to engage the firm and, instead, seeks to engage a third-party investment adviser and the firm earns compensation based on such engagement, the MSRB does not believe that the firm would be subject to Proposed Rule G-46 if it has not solicited the solicited entity for the purpose of obtaining or retaining an engagement on behalf of that third-party investment adviser.¹⁷³

III. Discussion of Commission’s Findings

The Commission has carefully considered the proposed rule change, the comment letter received, the MSRB Response Letter, and Amendment No. 1. The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to the MSRB.

In particular, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the provisions of Section 15B(b)(2)(C), which provides, in part, that the MSRB’s rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.¹⁷⁴

The Commission finds that the proposed rule change, as modified by Amendment No. 1, will: (i) prevent

fraudulent and manipulative acts and practices; (ii) foster cooperation and coordination among regulators; and (iii) protect investors, municipal entities, obligated persons, and the public interest.

A. Prevention of Fraudulent and Manipulative Acts and Practices

The Commission finds that the proposed rule change, as modified by Amendment No. 1, would help prevent fraudulent and manipulative acts and practices.

First, Proposed Rule G-46 would expressly prohibit solicitor municipal advisors from making a representation that the solicitor municipal advisor knows or should know is either materially false or misleading regarding the capacity, resources or knowledge of the solicitor client.¹⁷⁵ Second, Proposed Rule G-46 would require solicitor municipal advisors to have a reasonable basis for any material representations the solicitor municipal advisor makes to a solicited entity regarding the capacity, resources or knowledge of the solicitor client.¹⁷⁶ Third, Proposed Rule G-46 expressly would prohibit solicitor municipal advisors from delivering an inaccurate invoice for fees or expenses.¹⁷⁷ The Commission believes that the proposed rule change’s prohibitions prevent either: (i) forms of fraudulent and manipulative acts and practices themselves (e.g., materially false or misleading representations and inaccurate invoices for fees or expenses) or (ii) behavior that could reasonably be understood to accompany (or serve as indicia of) the commission of fraudulent and manipulative acts and practices, if they are not fraudulent and manipulative acts and practices themselves (e.g., lacking reasonable basis for a material representation). Furthermore, the proposed Supplementary Materials to Rule G-46 provide explanations of Proposed Rule G-46’s prohibitions of fraudulent and manipulative acts and practices. This increased clarity would increase the effectiveness of such prohibitions by raising understanding of these prohibitions among solicitor municipal advisors and the municipal entities and obligated persons with whom they interact.

Additionally, Proposed Rule G-46 prohibit solicitor municipal advisors from making payments for the purpose of obtaining or retaining an engagement to perform municipal advisory activities

¹⁶³ Response Letter at 3.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ 15 U.S.C. 78o-4(e)(4) and (e)(9).

¹⁶⁸ Response Letter at 3.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Exchange Act Section 15B(e)(9), 15 U.S.C. 78o-4(e)(9).

¹⁷² Response Letter at 3.

¹⁷³ Response Letter at 3-4.

¹⁷⁴ 15 U.S.C. 78o-4(b)(2)(C).

¹⁷⁵ Notice, 88 FR 9568.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

(subject to specified exceptions).¹⁷⁸ Among other things, the Commission finds that this prohibition would effectively require solicitor municipal advisors to use only associated persons or other regulated solicitor municipal advisors to obtain business on their behalf. This proposed rule change would help ensure that only regulated persons (who are subject to rules designed to prevent fraudulent and manipulative acts and practices) may engage in solicitation activities on behalf of a solicitor municipal advisor.

As such, the Commission finds that the proposed rule change, as modified by Amendment No. 1, helps prevent fraudulent and manipulative acts and practices.

B. Fostering Cooperation and Coordination

The Commission finds that the proposed rule change, as modified by Amendment No. 1, would foster cooperation and coordination with persons engaged in regulating transactions in municipal securities and municipal financial products.

Proposed Rule G-46 requires solicitor municipal advisors to document their relationships in writing that includes certain minimum content that is vital to the solicitor municipal advisor, its clients and applicable regulators in understanding the material terms of an engagement (including the scope of agreed-upon activities, information pertaining to compensation for such activities and whether the solicitation of municipal entities and/or obligated persons is anticipated).¹⁷⁹ Proposed Rule G-46's new documentation obligation (and the Supplementary Materials to Rule G-46 explaining it) would help promote certainty as to the applicable regulatory scheme for any engagement since only solicitations of municipal entities and obligated persons would be subject to Proposed Rule G-46, whereas other solicitations may fall within the jurisdiction of the rules of other regulators (e.g., the Commission or the Financial Industry Regulatory Authority). By promoting certainty regarding the regulatory scheme applicable to solicitor municipal advisors, the proposed rule change will allow different regulators to operate with a common understanding that these solicitations fall under the new regulatory regime for solicitor municipal advisors.

Similarly, the Commission finds that proposed Rule G-46 and the proposed amendments to Rule G-8 would assist

regulators who examine solicitor municipal advisors understand the solicitation arrangement through both Proposed Rule G-46's documentation requirements, as well as Rule G-8's requirements that such documentation be preserved in solicitor municipal advisor's books and records.¹⁸⁰ Furthermore, these proposals would provide these regulators with necessary information to assist in evaluating a solicitor municipal advisor's compliance with relevant obligations.¹⁸¹ The Commission further believes that the proposed amendments to Rule G-8 (with the ensuing application of existing MSRB Rule G-9 on records preservation) would help create an audit trail, assisting examination and enforcement authorities in their examination for compliance with, and prosecution of, these prohibitions.¹⁸²

As such, the Commission finds that the proposed rule change, as modified by Amendment No. 1, fosters cooperation and coordination among persons engaged in regulating transactions in municipal securities and municipal financial products.

C. Protection of Municipal Entities, Obligated Persons, and the Public Interest

The Commission believes that the proposed rule change, as modified by Amendment No. 1, would protect municipal entities, obligated persons, and the public interest.

Specifically, Proposed Rule G-46 requires solicitor municipal advisors to disclose in writing all of their material conflicts of interest and material legal or disciplinary events to the entities that determine whether to hire such solicitor municipal advisors.¹⁸³ The Commission finds that this requirement would increase solicitor municipal advisor accountability and discourage conduct inconsistent with a solicitor municipal advisor's obligations under Proposed Rule G-46 because such conduct would be required to be disclosed in information provided to clients. Specifically, the Commission finds that a municipal entity or obligated person could view a solicitor municipal advisor's disclosure of material conflict of interests and/or disclosure of material legal or disciplinary events as a reason to avoid retaining that solicitor municipal advisor. Therefore, the Commission believes that a solicitor municipal advisors may try to avoid such behavior to avoid losing future

engagements. As such, the Commission finds that the proposed rule change incentivizes firms to refrain from behavior that could harm municipal entities and obligated persons, and therefore, protect municipal entities, obligated persons, and the public interest.

The proposed rule change also would protect municipal entities, obligated persons, and the public interest by setting forth obligations applicable to solicitor municipal advisors similar to those applicable to non-solicitor municipal advisors to their clients under Rule G-42. Like non-solicitor municipal advisors, solicitor municipal advisors would be required to: disclose their material conflicts of interest;¹⁸⁴ document their relationships in writing;¹⁸⁵ and refrain from certain conduct such as making certain materially false or misleading representations,¹⁸⁶ delivering a materially inaccurate invoice,¹⁸⁷ and making certain payments for the purpose of obtaining or retaining an engagement.¹⁸⁸ Under Proposed Rule G-46, the protections provided by these provisions would be provided to municipal entities and obligated persons solicited by solicitor municipal advisors. Furthermore, the proposed changes to Rule G-8 would mandate preserving records related to Proposed Rule G-46; as such, Rule G-8 would strengthening these new protections by compelling contemporaneous documentation of compliance with them.

As such, the Commission finds that the proposed rule change, as modified by Amendment No. 1, protects municipal entities, obligated persons, and the public interest.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.¹⁸⁹ Exchange Act Section 15B(b)(2)(C)¹⁹⁰ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Commission does not believe the proposed rule change, as modified by Amendment No. 1, would impose any new burden on competition as it would apply a regulatory regime equally to all

¹⁸⁴ See Rule G-42(b)(i)(F).

¹⁸⁵ See Rule G-42(c) and Proposed Rule G-46(c).

¹⁸⁶ See Rule G-42(e)(i)(C) and Proposed Rule G-46(d)(i).

¹⁸⁷ See Rule G-42(e)(i)(B) and Proposed Rule G-46(g)(i).

¹⁸⁸ See Rule G-8 and Rule G-46.

¹⁸⁹ 15 U.S.C. 78c(f).

¹⁹⁰ 15 U.S.C. 78o-4(b)(2)(C).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Notice, 88 FR at 9567-68.

¹⁸³ Notice, 88 FR at 9565-66.

solicitor municipal advisors (similar to the regime that currently exists for non-solicitor municipal advisors under Rule G-42 and Rule G-8 on recordkeeping, and for underwriters under the Rule G-17 Underwriter's Guidance).¹⁹¹ This consequence of the proposed rule change, as modified by Amendment No. 1, would not burden competition. Further, the Commission finds that on an ongoing year-by-year basis, the additional regulatory burden imposed would be proportional to each solicitor municipal advisory firm's size and business activities. Accordingly, the Commission does not believe that the proposed rule change, as modified by Amendment No. 1, would result in any additional burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission also finds that the proposed rule change, as modified by Amendment No. 1, will not hinder capital formation. As noted above, the proposed rule change brings a regulatory regime to solicitor municipal advisors similar to the regimes that currently exist for non-solicitor municipal advisors and underwriters. Therefore, Commission finds that the proposed rule change would not negatively impact the municipal securities market's operational efficiency.

The Commission also finds that the proposed rule change includes provisions that could help promote efficiency. As noted above, the Commission believes that the proposed rule change would promote clearer regulatory requirements for all solicitor municipal advisors.

As noted above, the Commission received one comment letter on the filing. The Commission believes that the MSRB, through its response and Amendment No. 1, addressed the commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MSRB-2023-02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-MSRB-2023-02. 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 MSRB. All comments received will be posted without change; the Commission does not 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-MSRB-2023-02 and should be submitted on or before April 25, 2023.

VI. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the **Federal Register**. As noted by the MSRB, Amendment No. 1 does not raise any significant issues with respect to the proposed rule change and only provides a minor change to address an issue raised by the commenter and other technical corrections. Further, the

proposed rule change, as modified by Amendment No. 1, is designed to ease burdens without negatively affecting investors or the public interest.

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Exchange Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,¹⁹² that the proposed rule change (SR-MSRB-2023-02) be, and hereby is, approved.

For the Commission, by the Office of Municipal Securities, pursuant to delegated authority.¹⁹³

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-06899 Filed 4-3-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-40, OMB Control No. 3235-0313]

Proposed Collection; Comment Request; Extension: Rule 203-2 & Form ADV-W

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Rule 203-2 (17 CFR 275.203-2) and Form ADV-W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b)." Rule 203-2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration or pending registration with the Commission. Rule 203-2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV-W electronically on the Investment Adviser Registration Depository

¹⁹² 15 U.S.C. 78s(b)(2).

¹⁹³ 17 CFR 200.30-3(a)(12).

¹⁹¹ See Rules G-42; G-8; and G-17.

("IARD"). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV-W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV-W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 769 respondents annually filing for full withdrawal and approximately 647 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 739 hours ((769 respondents × .75 hours) + (647 respondents × .25 hours)).

Rule 203-2 and Form ADV-W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV-W are filings with the Commission. These filings are not kept confidential. 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 control number. Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the 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 June 5, 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: March 30, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-06963 Filed 4-3-23; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 12032]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of "Statue of a Giant From Mont'e Prama, Sardinia"

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary exhibition or display at The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023-06863 Filed 4-3-23; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 12029]

Notice of Determinations; Additional Culturally Significant Objects Being Imported for Exhibition—Determinations: "Scripture and Science: Our Universe, Ourselves, and Our Place" Exhibition

SUMMARY: On January 3, 2023, notice was published on page 125 of the **Federal Register** (volume 88, number 1) of determinations pertaining to certain objects to be included in an exhibition entitled "Scripture and Science: Our Universe, Ourselves, and Our Place." Notice is hereby given of the following determinations: I hereby determine that certain additional objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the aforesaid exhibition at the Museum of the Bible, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: section2459@state.gov). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA-5), Suite 5H03, Washington, DC 20522-0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Scott Weinhold,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023-06927 Filed 4-3-23; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

[Docket No. FAA–2019–0362]

Agency Information Collection**Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Maintenance, Preventive Maintenance, Rebuilding, and Alteration****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 November 15, 2022. The information to be collected is necessary to insure the safety of the flying public. Documentation of maintenance repair actions record who, what, when, where and how of the task performed. All maintenance actions as well as documentation are required by the Code of Federal Regulations. This collection focuses on the Form 337 which is collected by the FAA as required by Federal Aviation Regulation Part 43. Other records for preventative maintenance, and logbook entries are not collected by the FAA serve as a responsibility of the owner to maintain in case of verification of airworthiness when seeking approvals or sale of the aircraft. This insures proper certification of personnel; proper tooling is utilized and accurate measures to insure safety. Total form 337s submitted in 2017 is 54,237. Total aircraft registrations on file is 289,490. It is estimated by the numbers collected one in every five aircraft have a 337 form submitted for major alteration and repairs performed. Each 337 takes approximately 1 hour.

DATES: Written comments should be submitted by April 27, 2023.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395–6974, or mailed to the Office

of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jude Sellers by email at: jude.n.sellers@faa.gov, (225) 788–1829.

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. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0020.

Title: Maintenance, Preventive Maintenance, Rebuilding, and Alteration.

Form Numbers: Aircraft maintenance logbooks and form 337.

Type of Review: Renewal of information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 15, 2022 (87 FR 68570). Title 14 CFR part 43 mandates information to be provided when an alteration or major repair is performed on an aircraft of United States registry. Submission of Form 337 is required for capture in the aircraft permanent records for current and future owners to substantiate the requirements of the regulations, prior to operation of the aircraft. Aircraft owners have the responsibility of documentation and submission of all maintenance records performed to their aircraft.

Respondents: 54,237 Aircraft owners.

Frequency: On occasion. When major repairs or alterations are accomplished on Aircraft bearing an "N" number.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: Industry Annual burden 54,237 man hours at an annual cost of \$1,193,214.

Issued in Washington, DC, on March 28, 2023.

Jude Sellers,

Aviation Safety Inspector, AFS–340 General Aviation Maintenance Branch.

[FR Doc. 2023–06901 Filed 4–3–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration**

[Docket Number FRA–2011–0074]

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 by letters dated November 18, 2022; February 2, 2023; and March 17, 2023, BNSF Railway Company (BNSF) 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 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). The relevant Docket Number is FRA–2011–0074.

Specifically, BNSF requests to continue using its software technology, Air Brake System Virtual Training Environment (ABSVTE), to implement a virtual three-dimensional simulation as an alternative to satisfy the “hands-on” portion of periodic refresher training required by § 232.203(b)(8).¹ Refresher training is required at intervals not to exceed 3 years and must consist of classroom and hands-on training, as well as testing.

In support of its petition, BNSF explains that the ABSVTE “provides a more comprehensive environment for knowledge transfer and assessment than traditional hands-on brake inspection training.” BNSF asserts that the virtual training: (1) can “provide training on every railcar type;” (2) can “simulate the presence of a broad spectrum of mechanical defects;” (3) “ensure[s] accuracy of employee observations” and “provide feedback to the employee;” and (4) allows training to be conducted “without exposing employees to walking hazards or other potential injury exposures.” BNSF notes that the “rate of [rail equipment incidents] caused by car mechanical defects per one million car-miles has continued on a downward trajectory since BNSF began providing training under the waiver.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

¹ BNSF's November 18, 2022, petition requested both an extension of the current relief and a modification to apply the relief in a self-directed, wholly virtual environment. However, BNSF's February 2, 2023, petition withdrew the request for modification of the relief but reaffirmed its request for an extension of the existing relief.

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 June 5, 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), 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](https://www.regulations.gov).

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2023-06991 Filed 4-3-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2023-0016]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 7, 2023, Indiana Northeastern Railroad Company, in partnership with the Fort Wayne Railroad Historical Society (Petitioners), petitioned the Federal Railroad

Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers). FRA assigned the petition Docket Number FRA-2023-0016.

Specifically, Petitioners request relief from § 240.201(d), which requires that only certified persons operate locomotives and trains. The relief would allow noncertified persons to pay a fee and operate a locomotive as part of a visitor experience program. In support of its petition, Petitioners note that the relief would only apply to persons participating in the program, and that participants would be 18 years of age or older and under the direct supervision of a certified and qualified locomotive engineer. Further, all movements would take place during daylight hours and at restricted speed.

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 June 5, 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](https://www.regulations.gov).

Issued in Washington, DC.

John Karl Alexy,
Associate Administrator for Railroad Safety,
Chief Safety Officer.

[FR Doc. 2023-06993 Filed 4-3-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2010-0164]

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 January 10, 2023, the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART)—Transportation Division and Albany Port Railroad (Petitioners) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the hours of service laws contained at title 49 United States Code (U.S.C.) section 21103(a). The relevant Docket Number is FRA-2010-0164.

Specifically, Petitioners requested an extension of the existing relief from the provisions of 49 U.S.C. 21103(a)(4), which in part, provides that a train employee may not be required or allowed to remain or go on duty after that employee has initiated an on-duty period each day for 6 consecutive days, unless that employee has had at least 48 hours off duty at the employee's home terminal. Petitioners seek to continue to allow a train employee to initiate an on-duty period for 6 consecutive days followed by 24 hours off duty. Petitioners state that Albany Port Railroad runs only one shift per day and operates solely within yard limits. The relief would allow the railroad to serve its customers on Saturdays.

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 <https://www.regulations.gov>. Follow the online instructions for submitting comments.

Communications received by June 5, 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 www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023-06990 Filed 4-3-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2017-0126]

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 by letter received on March 13, 2023, the Denton County Transportation Authority (DCTA) 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 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). The relevant docket number is FRA-2017-0126.

Specifically, DCTA requests continued relief as part of its

participation in FRA's Confidential Close Call Reporting System (C³RS) Program. DCTA seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 240.117(e)(1)-(4); 240.305(a)(1)-(4) and (a)(6); 240.307; 242.403(b), (c), (e)(1)-(4), (e)(6)-(11), (f)(1)-(2); and 242.407. The C³RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C³RS Implementing Memorandum of Understanding.

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 parties desire 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 June 5, 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), 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 www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023-06992 Filed 4-3-23; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person is blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (www.treasury.gov/ofac).

Notice of OFAC Actions

On March 30, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual

1. MKRTYCHEV, Ashot (a.k.a. MKRTYCEV, Asot), Hana Melichkova Street 3448/37, Bratislava 84105, Slovakia; DOB 07 May 1966; POB Baku, Azerbaijan; citizen Slovakia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea

Sanctions Regulations section 510.214; Passport BD3843329 (Slovakia) expires 08 Apr 2029; alt. Passport BD5609822 (Slovakia) expires 19 May 2024 (individual) [DPRK].

Designated pursuant to section 1(a)(ii)(G) of Executive Order 13551, "Blocking Property of Certain Persons With Respect to North Korea" (E.O. 13551), for having attempted to engage in activities described in section 1(a)(ii)(A) of E.O. 13551.

Authority: E.O. 13551, 75 FR 53837, 3 CFR, 2010 Comp., p.242.

Dated: March 30, 2023.

Andrea Gacki,

*Director, Office of Foreign Assets Control,
U.S. Department of the Treasury.*

[FR Doc. 2023-06976 Filed 4-3-23; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and who have been removed from the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

Notice of OFAC Actions

On March 30, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

Individuals

1. ZEVALLOS GONZALES, Sara Marilyn, c/o EMPRESA EDITORA

CONTINENTE PRESS S.A., Lima, Peru; c/o REPRESENTACIONES ORIENTE S.R.L., Trujillo, Peru; c/o ORIENTE TOURS S.R.L., Lima, Peru; c/o PERU TOTAL MARKET E.I.R.L., Lima, Peru; c/o ORIENTE CONTRATISTAS GENERALES S.A., Trujillo, Peru; c/o SERVICIOS SILSA S.A.C., Lima, Peru; c/o LA CROSSE GROUP INC, Tortola, Virgin Islands, British; c/o AERO COURIER CARGO S.A., Lima, Peru; c/o TRANSPORTES AEREOS UNIDOS SELVA AMAZONICA S.A., Lima, Peru; Calle Trinidad Moran 1316, Lima, Peru; DOB 01 Jan 1963; LE Number 07553224 (Peru) (individual) [SDNTK].

2. TOMAGHELLI, Gaston, Buenos Aires, Argentina; DOB 17 Nov 1977; POB Argentina; nationality Argentina; Gender Male; Passport AAD186419 (Argentina); D.N.I. 26201272 (Argentina) (individual) [SDNTK] (Linked To: DTS CONSULTING S.A.).

3. ALVAREZ TOSTADO, Jose (a.k.a. CASTELLANOS ALVAREZ TOSTADO, Juan Jose); DOB 27 Aug 1955; POB Mexico (individual) [SDNTK].

4. CARBAJAL REYES, Ramon Ulises (a.k.a. CARRAJAL REYES, Ramon Ulises; a.k.a. CARVAJAL REYES, Ramon Ulises), Calle Michoacan No. 42, Int. 02, Zono Central, Doloros Hidalgo, Guanajuato, Mexico; DOB 22 Nov 1974; alt. DOB 23 Dec 1974; POB Guanajuato, Mexico; alt. POB Salamanca, Guanajuato, Mexico; nationality Mexico; citizen Mexico; R.F.C. CARR741122 (Mexico); C.U.R.P. CARR741122HGTRYM01 (Mexico); Cartilla de Servicio Militar Nacional B-8134996 (Mexico); C.U.I.P. CARR741122H11270693 (Mexico) (individual) [SDNTK].

5. REJON AGUILAR, Jesus Enrique (a.k.a. REJON AGUILAR, Jose (Jesus) Enrique), Calle Hidalgo No. 6, Col. Sabancuy, Carmen, Campeche C.P. 24370, Mexico; DOB 09 Jun 1976; alt. DOB 01 Jan 1970; POB Campeche; nationality Mexico; citizen Mexico; C.U.R.P. REAJ760609HCCJGS02 (Mexico); Cartilla de Servicio Militar Nacional C720867 (Mexico); C.U.I.P. REAE760609H04151249 (Mexico) (individual) [SDNTK].

6. QUINTERO CABALLERO, Luis Ramiro, Carrera 56 No. 81-98, Apt. 9B, Edificio Galery El Golf, Barranquilla, Colombia; Carrera 52B 100-240, Barranquilla, Colombia; DOB 23 Jan 1980; POB Santa Marta, Magdalena, Colombia; Cedula No. 7604133 (Colombia) (individual) [SDNTK] (Linked To: INTERNACIONAL MONEY SERVICIO LTDA.; Linked To: INVERSIONES Y REPRESENTACIONES EL CAIRO LTDA.; Linked To: EL KAIRO INTERNACIONAL SAS).

7. PELAEZ LOPEZ, John Jairo, c/o RENTA LIQUIDA S.A.S., Medellin, Antioquia, Colombia; Calle 32B Sur No. 47-51 Apto. 801, Envigado, Antioquia, Colombia; Calle 46 No. 86-24, Medellin, Colombia; DOB 05 Sep 1957; Cedula No. 3356399 (Colombia) (individual) [SDNT].

8. GRAJALES LEMOS, Juan Jacobo (a.k.a. GRAJALES LEMOS, Javier), c/o Creta S.A., La Union, Valle, Colombia; c/o GRAJALES S.A., La Union, Valle, Colombia; c/o HOTEL LOS VINEDOS, La Union, Valle, Colombia; c/o SALIM S.A., La Union, Valle, Colombia; c/o TRANSPORTES DEL ESPIRITU SANTO S.A., La Union, Valle, Colombia; c/o JEHOVA LTDA., Tulua, Valle, Colombia; c/o FUNDACION CENTRO FRUTICOLA ANDINO, La Union, Valle, Colombia; DOB 28 Oct 1972; POB La Union, Valle, Colombia; Cedula No. 94273951 (Colombia) (individual) [SDNT].

9. GALLON ARISTIZABAL, Mariana, Colombia; DOB 04 Nov 1992; POB Medellin, Antioquia, Colombia; Gender Female; Cedula No. 1152443588 (Colombia) (individual) [SDNTK] (Linked To: CLAMASAN S.A.S.; Linked To: GUISANES S.A.S.; Linked To: AGROPECUARIA MAIS SOCIEDAD POR ACCIONES SIMPLIFICADA; Linked To: AGROINDUSTRIAS CIMA S.A.S.).

10. CHENG, Guifeng, China; DOB 02 Feb 1958; nationality China; Gender Female; National ID No. 31010819580202164 (China) (individual) [SDNTK].

11. CAZAREZ PEREZ, Efrain (a.k.a. CAZARES PEREZ, Efrain), Calle Torre de Londres No. 7028, Fraccionamiento Las Torres, Culiacan, Sinaloa, Mexico; c/o CAZPER IMPORTACIONES, S.A. DE C.V., Culiacan, Sinaloa, Mexico; DOB 16 May 1965; POB Campo Loaiza, Sinaloa, Mexico; nationality Mexico; citizen Mexico; Electoral Registry No. CAPE6505164F5 (Mexico) (individual) [SDNTK].

12. CAZAREZ PEREZ, Maria Tiburcia (a.k.a. CAZARES PEREZ, Maria Tiburcia), Calle Isla del Oeste No. 103, La Primavera, Culiacan, Sinaloa, Mexico; c/o CAZPER IMPORTACIONES, S.A. DE C.V., Culiacan, Sinaloa, Mexico; DOB 14 Oct 1962; POB Campo Tribolet, Perteneciente a la sindicatura de Sataya, Navolato, Sinaloa; nationality Mexico; citizen Mexico; C.U.R.P. CAPT621014MSLZRB00 (Mexico); Electoral Registry No. CAPT6210144PA (Mexico) (individual) [SDNTK].

13. CAZAREZ PEREZ, Irma (a.k.a. CAZARES PEREZ, Irma), Calle Isla del Oeste No. 103, La Primavera, Culiacan, Sinaloa, Mexico; c/o CAZPER

IMPORTACIONES, S.A. DE C.V., Culiacan, Sinaloa, Mexico; DOB 27 Sep 1956; POB Zapote de los Moya, Mocorito, Sinaloa, Mexico; nationality Mexico; citizen Mexico; C.U.R.P. CAPI560927MSLZRR15 (Mexico); alt. C.U.R.P. CAPI560927MSLZRR07 (Mexico); Electoral Registry No. CAPI560927RF4 (Mexico) (individual) [SDNTK].

Entities

1. CAZPER IMPORTACIONES, S.A. DE C.V., Ave. Manuel Vallarta No. 2144, Col. Centro, Culiacan, Sinaloa, Mexico; Ave. Manuel Vallarta No. 2136, Col. Centro, Culiacan, Sinaloa, Mexico; Ave. Manuel Vallarta #2136-1, Col. Centro Sinaloa, Culiacan, Sinaloa, Mexico; Ave. Manuel Vallarta 2136, Centro Culiacan Fray Servando Teresa de Mier E, Culiacan de Rosales, Culiacan 80129, Mexico; website www.cazper.com.mx; R.F.C. CIM040429UH4 (Mexico) [SDNTK].

2. DTS CONSULTING S.A., 25 de Mayo 611, piso 4 of. 2, Buenos Aires, Argentina [SDNTK].

3. EL KAIRO INTERNACIONAL SAS, Carrera 15 No. 93-60 Local 1-21, Bogota, Colombia; NIT #900376699-6 (Colombia); Matricula Mercantil No 02018260 (Colombia) [SDNTK].

4. INVERSIONES Y REPRESENTACIONES EL CAIRO LTDA., Calle 76 No. 48-30, Barranquilla, Colombia; NIT #802013384-9 (Colombia) [SDNTK].

5. INTERNACIONAL MONEY SERVICIO LTDA., Calle 76 No. 48-30, Barranquilla, Colombia; Carrera 15 No. 93-60 Local 1-21, Bogota, Colombia; Cra. 15 No. 119-59, Int. 308, Bogota, Colombia; NIT #8301427473 (Colombia); alt. NIT #9003766996 (Colombia) [SDNTK].

6. OYSTER INVESTMENTS LLC, Lewes, DE, United States; 1250 S Miami Ave., Unit 1004, Miami, FL, United States; 1250 S Miami Ave., Unit 1603, Miami, FL, United States; 170 SE 14 St.,

Unit 1606, Miami, FL, United States; 170 SE 14 St., Unit 2405, Miami, FL, United States; File Number 5277495 (United States) [SDNTK].

7. RENTA LIQUIDA S.A.S., Calle 16 Sur No. 48-17 Apto. 503, Medellin, Colombia; Calle 32B Sur No. 47-51, Envigado, Antioquia, Colombia; Calle 46 No. 86-24, Medellin, Colombia; NIT #900316915-6 (Colombia) [SDNT].

8. SMILEWALLET B.V., Herengracht 420, Amsterdam 1017BZ, Netherlands; website www.smilewallet.com; Chamber of Commerce Number 70004676 (Netherlands); RSIN 858100034 (Netherlands) [SDNTK].

9. WATER HILL CORP., Miami, FL, United States; Identification Number P16000064887 (United States) [SDNTK].

Dated: March 30, 2023.

Gregory T. Gatjanis,

Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023-06957 Filed 4-3-23; 8:45 am]

BILLING CODE 4810-AL-P



FEDERAL REGISTER

Vol. 88

Tuesday,

No. 64

April 4, 2023

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 418 and 424

Medicare Program; FY 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 418 and 424

[CMS-1787-P]

RIN 0938-AV10

Medicare Program; FY 2024 Hospice Wage Index and Payment Rate Update, Hospice Conditions of Participation Updates, Hospice Quality Reporting Program Requirements, and Hospice Certifying Physician Provider Enrollment Requirements

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the hospice wage index, payment rates, and aggregate cap amount for fiscal year (FY) 2024. This rule includes information on hospice utilization trends and solicits comments regarding information related to the provision of higher levels of hospice care; spending patterns for non-hospice services provided during the election of the hospice benefit; ownership transparency; equipping patients and caregivers with information to inform hospice selection; and ways to examine health equity under the hospice benefit. This rule also proposes conforming regulations text changes related to the anticipated expiration of the COVID-19 public health emergency (PHE). In addition, this rule proposes updates to the Hospice Quality Reporting Program; discusses the Hospice Outcomes and Patient Evaluation tool; provides an update on Health Equity and future quality measures; and provides updates on the Consumer Assessment of Healthcare Providers and Systems, Hospice Survey Mode Experiment. This rule also proposes to codify hospice data submission thresholds and discusses updates to hospice survey and enforcement procedures. Additionally, the rule proposes to require hospice certifying physicians to be Medicare-enrolled or to have validly opted-out.

DATES: To be assured consideration, comments must be received at one of the addresses provided below by May 30, 2023.

ADDRESSES: In commenting, refer to file code CMS-1787-P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (choose *only one* of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1787-P, P.O. Box 8010, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1787-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

For general questions about hospice payment policy, send your inquiry via email to: hospicepolicy@cms.hhs.gov.

For questions regarding the CAHPS® Hospice Survey, contact Lauren Fuentes at (410) 786-2290.

For questions regarding the hospice conditions of participation (CoPs), contact Mary Rossi-Coajou at (410) 786-6051.

For questions regarding the hospice public reporting, contact Charles Padgett at (410) 786-2811.

For questions regarding the hospice quality reporting program, contact Jermama Keys at (410) 786-7778.

For questions regarding hospice certifying physician provider enrollment, contact Frank Whelan at (410) 786-1302.

For information regarding the hospice special focus program, send your inquiry via email to QSOG_hospice@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the

individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Wage index addenda will be available only through the internet on our website at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html>.

I. Executive Summary

A. Purpose

This rule proposes updates to the hospice wage index, payment rates, and cap amount for fiscal year (FY) 2024 as required under section 1814(i) of the Social Security Act (the Act). In addition, this rule includes information on hospice utilization and spending trends and solicits comments regarding those trends and ways to examine health equity under the hospice benefit. This rule also proposes text changes to regulations that align with the anticipated expiration of the COVID-19 PHE. This proposed rule discusses updates to the Hospice Quality Reporting Program (HQRP) and the further development of the Hospice Outcomes and Patient Evaluation (HOPE) tool with national beta test analyses; and discusses updates on Health Equity and future quality measures (QMs). It also provides updates on the Consumer Assessment of Healthcare Providers and Systems (CAHPS), Hospice Survey Mode Experiment. This rule includes a proposal to codify hospice data submission thresholds and discusses updates to hospice survey and enforcement procedures. In addition, this rule proposes provider enrollment requirements for ordering/certifying physicians for hospice services.

B. Summary of the Major Provisions

Section III.A of this proposed rule includes data analysis on historical hospice utilization trends. The analysis includes data on the number of beneficiaries using the hospice benefit, live discharges, reported diagnoses on hospice claims, Medicare hospice spending, and Medicare Parts A, B, and D non-hospice spending during a hospice election. In this section, we also solicit comments from the public, including hospice providers, beneficiaries, and patient advocates related to the following: increasing access to higher levels of hospice care; our analysis of non-hospice spending during a hospice election; ownership

transparency; hospice election decision-making; and ways to examine health equity under the hospice benefit.

In section III.B of this proposed rule, we discuss the proposed FY 2024 hospice payment update percentage of 2.8 percent, updates to the hospice payment rates, as well as the updates to the hospice cap amount for FY 2024 by the hospice payment update percentage of 2.8 percent. We also propose text changes to the regulations related to the anticipated expiration of the COVID-19 PHE.

In section III.C of this proposed rule, we discuss updates to the HQR, including the HOPE tool; an update on Health Equity and future quality measures; updates on the CAHPS® Hospice Survey Mode Experiment; and a proposal to codify the hospice data submission threshold.

In section III.D of this proposed rule, we propose updates on hospice survey and enforcement procedures.

Finally, in section III.E of this proposed rule, we propose to require physicians who order or certify hospice services for Medicare beneficiaries to be enrolled in or validly opted-out of Medicare as a prerequisite for the payment of the hospice service in question.

The overall economic impact of this proposed rule is estimated to be \$720 million in increased payments to hospices for FY 2024.

II. Background

A. Hospice Care

Hospice care is a comprehensive, holistic approach to treatment that recognizes the impending death of a terminally ill individual and warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. Medicare regulations define “palliative care” as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice (§ 418.3). Palliative care is at the core of hospice philosophy and care practices, and is a critical component of the Medicare hospice benefit.

The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological,

emotional, and spiritual services through a collaboration of professionals and other caregivers, with the goal of making the beneficiary as physically and emotionally comfortable as possible. Hospice is compassionate beneficiary and family/caregiver-centered care for those who are terminally ill.

As referenced in our regulations at § 418.22(b)(1), to be eligible for Medicare hospice services, the patient’s attending physician (if any) and the hospice medical director must certify that the individual is “terminally ill,” as defined in section 1861(dd)(3)(A) of the Act and our regulations at § 418.3; that is, the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course. The regulations at § 418.22(b)(2) require that clinical information and other documentation that support the medical prognosis accompany the certification and be filed in the medical record with it and regulations at § 418.22(b)(3) require that the certification and recertification forms include a brief narrative explanation of the clinical findings that support a life expectancy of 6 months or less.

Under the Medicare hospice benefit, the election of hospice care is a patient choice and once a terminally ill patient elects to receive hospice care, a hospice interdisciplinary group is essential in the seamless provision of primarily home-based services. The hospice interdisciplinary group works with the beneficiary, family, and caregivers to develop a coordinated, comprehensive care plan; reduce unnecessary diagnostics or ineffective therapies; and maintain ongoing communication with individuals and their families about changes in their condition. The beneficiary’s care plan will shift over time to meet the changing needs of the individual, family, and caregiver(s) as the individual approaches the end of life.

If, in the judgment of the hospice interdisciplinary team, which includes the hospice physician, the patient’s symptoms cannot be effectively managed at home, then the patient is eligible for general inpatient care (GIP), a more medically intense level of care. GIP must be provided in a Medicare-certified hospice freestanding facility, skilled nursing facility, or hospital. GIP is provided to ensure that any new or worsening symptoms are intensively addressed so that the beneficiary can return to his or her home and continue to receive routine home care (RHC). Limited, short-term, intermittent, inpatient respite care (IRC) is also

available because of the absence or need for relief of the family or other caregivers. Additionally, an individual can receive continuous home care (CHC) during a period of crisis in which an individual requires continuous care to achieve palliation or management of acute medical symptoms so that the individual can remain at home. CHC may be covered for as much as 24 hours a day, and these periods must be predominantly nursing care, in accordance with the regulations at § 418.204. A minimum of 8 hours of nursing care or nursing and aide care, must be furnished on a particular day to qualify for the CHC rate (§ 418.302(e)(4)).

Hospices covered by this rule must comply with applicable civil rights laws, including section 1557 of the Affordable Care Act, section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, which require covered programs to take appropriate steps to ensure effective communication with patients with disabilities and patient companions with disabilities, including the provisions of auxiliary aids and services when necessary for effective communication.¹ Further information may be found at: <https://www.hhs.gov/ocr/civilrights>.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in federally assisted programs or activities. Department Guidance indicates that the Department interprets Title VI to require covered entities to take reasonable steps to provide meaningful access to their programs or activities to individuals with limited English proficiency (LEP). Regulations implementing section 1557 require reasonable steps to provide meaningful access to LEP individuals. Meaningful access may require the use of interpreters and translated materials.

B. Services Covered by the Medicare Hospice Benefit

Coverage under the Medicare hospice benefit requires that hospice services must be reasonable and necessary for the palliation and management of the terminal illness and related conditions. Section 1861(dd)(1) of the Act establishes the services that are to be rendered by a Medicare-certified hospice program. These covered services include: nursing care; physical therapy; occupational therapy; speech-

¹ Hospices receiving Medicare Part A funds or other Federal financial assistance from the Department are also subject to additional Federal civil rights laws, including the Age Discrimination Act, and are subject to conscience and religious freedom laws where applicable.

language pathology therapy; medical social services; home health aide services (called hospice aide services); physician services; homemaker services; medical supplies (including drugs and biologicals); medical appliances; counseling services (including dietary counseling); short-term inpatient care in a hospital, nursing facility or hospice inpatient facility (including both respite care and procedures necessary for pain control and acute or chronic symptom management); continuous home care during periods of crisis, and only as necessary, to maintain the terminally ill individual at home; and any other item or service which is specified in the plan of care and for which payment may otherwise be made under Medicare, in accordance with Title XVIII of the Act.

Section 1814(a)(7)(B) of the Act requires that a written plan for providing hospice care to a beneficiary, who is a hospice patient, be established before care is provided by, or under arrangements made by, the hospice program; and that the written plan be periodically reviewed by the beneficiary's attending physician (if any), the hospice medical director, and an interdisciplinary group (section 1861(dd)(2)(B) of the Act). The services offered under the Medicare hospice benefit must be available to beneficiaries as needed, 24 hours a day, 7 days a week (section 1861(dd)(2)(A)(i) of the Act).

Upon the implementation of the hospice benefit, the Congress also expected hospices to continue to use volunteer services, although Medicare does not pay for these volunteer services (section 1861(dd)(2)(E) of the Act). As stated in the Health Care Financing Administration's (now Centers for Medicare & Medicaid Services (CMS)) proposed rule "Medicare Program; Hospice Care" (48 FR 38149), the hospice must have an interdisciplinary group composed of paid hospice employees as well as hospice volunteers, and that "the hospice benefit and the resulting Medicare reimbursement is not intended to diminish the voluntary spirit of hospices." This expectation supports the hospice philosophy of community based, holistic, comprehensive, and compassionate end of life care.

C. Medicare Payment for Hospice Care

Sections 1812(d), 1813(a)(4), 1814(a)(7), 1814(i), and 1861(dd) of the Act, and the regulations in 42 CFR part 418, establish eligibility requirements, payment standards and procedures; define covered services; and delineate the conditions a hospice must meet to be approved for participation in the

Medicare program. Part 418, subpart G, provides for a per diem payment based on one of four prospectively determined rate categories of hospice care (RHC, CHC, IRC, and GIP), based on each day a qualified Medicare beneficiary is under hospice care (once the individual has elected the benefit). This per diem payment is meant to cover all of the hospice services and items needed to manage the beneficiary's care, as required by section 1861(dd)(1) of the Act.

While payment made to hospices is to cover all items, services, and drugs for the palliation and management of the terminal illness and related conditions, Federal funds cannot be used for prohibited activities, even in the context of a per diem payment. While a recent article in a policy journal² discussed the potential role hospices could play in medical aid in dying (MAID) where such practices have been legalized in certain states, the Assisted Suicide Funding Restriction Act of 1997 (Pub. L. 105–12, April 30, 1997) prohibits the use of Federal funds to provide or pay for any health care item or service or health benefit coverage for the purpose of causing, or assisting to cause, the death of any individual including "mercy killing, euthanasia, or assisted suicide". However, the prohibition does not pertain to the provision of an item or service for the purpose of alleviating pain or discomfort, even if such use may increase the risk of death, so long as the item or service is not furnished for the specific purpose of causing or accelerating death.

1. Omnibus Budget Reconciliation Act of 1989

Section 6005(a) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) amended section 1814(i)(1)(C) of the Act and provided changes in the methodology concerning updating the daily payment rates based on the hospital market basket percentage increase applied to the payment rates in effect during the previous Federal fiscal year.

2. Balanced Budget Act of 1997

Section 4441(a) of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established that updates to the hospice payment rates beginning fiscal year (FY) 2002 and subsequent FYs be the hospital market basket percentage increase for the FY. Section 4442 of the BBA amended section 1814(i)(2) of the Act, effective for services furnished on

or after October 1, 1997, to require that hospices submit claims for payment for hospice care furnished in an individual's home only on the basis of the geographic location at which the service is furnished. Previously, local wage index values were applied based on the geographic location of the hospice provider, regardless of where the hospice care was furnished. Section 4443 of the BBA amended sections 1812(a)(4) and 1812(d)(1) of the Act to provide for hospice benefit periods of two 90-day periods, followed by an unlimited number of 60-day periods.

3. FY 1998 Hospice Wage Index Final Rule

The FY 1998 Hospice Wage Index final rule (62 FR 42860) implemented a new methodology for calculating the hospice wage index and instituted an annual Budget Neutrality Adjustment Factor (BNAF) so aggregate Medicare payments to hospices would remain budget neutral to payments calculated using the 1983 wage index.

4. FY 2010 Hospice Wage Index Final Rule

The FY 2010 Hospice Wage Index and Rate Update final rule (74 FR 39384) instituted an incremental 7-year phase-out of the BNAF beginning in FY 2010 through FY 2016. The BNAF phase-out reduced the amount of the BNAF increase applied to the hospice wage index value, but was not a reduction in the hospice wage index value itself or in the hospice payment rates.

5. The Affordable Care Act

Starting with FY 2013 (and in subsequent FYs), the market basket percentage increase under the hospice payment system referenced in sections 1814(i)(1)(C)(ii)(VII) and 1814(i)(1)(C)(iii) of the Act are subject to annual reductions related to changes in economy-wide productivity, as specified in section 1814(i)(1)(C)(iv) of the Act.

In addition, sections 1814(i)(5)(A) through (C) of the Act, as added by section 3132(a) of the Patient Protection and Affordable Care Act (PPACA) (Pub. L. 111–148), required hospices to begin submitting quality data, based on measures specified by the Secretary of the Department of Health and Human Services (the Secretary), for FY 2014 and subsequent FYs. Since FY 2014, hospices that fail to report quality data have their market basket percentage increase reduced by 2 percentage points. We note that with the passage of the Consolidated Appropriations Act, 2021 (hereafter referred to as CAA, 2021) (Pub. L. 116–260), the reduction for

² Nelson, R., Should Medical Aid in Dying Be Part of Hospice Care? Medscape Nurses. February 26, 2020. https://www.medscape.com/viewarticle/925769#vp_1.

failure to report quality data changes to 4 percentage points beginning in FY 2024.

Section 1814(a)(7)(D)(i) of the Act, as added by section 3132(b)(2) of the PPACA, required that effective January 1, 2011, a hospice physician or nurse practitioner have a face-to-face encounter with the beneficiary to determine continued eligibility of the beneficiary's hospice care prior to the 180th day recertification and each subsequent recertification and to attest that such visit took place. When implementing this provision, CMS finalized, in the FY 2011 Hospice Wage Index final rule (75 FR 70435), that the 180th day recertification and subsequent recertifications would correspond to the beneficiary's third or subsequent benefit periods. Further, section 1814(i)(6) of the Act, as added by section 3132(a)(1)(B) of the PPACA, authorized the Secretary to collect additional data and information determined appropriate to revise payments for hospice care and other purposes. The types of data and information suggested in the PPACA could capture accurate resource utilization, which could be collected on claims, cost reports, and possibly other mechanisms, as the Secretary determined to be appropriate. The data collected could be used to revise the methodology for determining the payment rates for RHC and other services included in hospice care, no earlier than October 1, 2013, as described in section 1814(i)(6)(D) of the Act. In addition, CMS was required to consult with hospice programs and the Medicare Payment Advisory Commission (MedPAC) regarding additional data collection and payment revision options.

6. FY 2012 Hospice Wage Index Final Rule

In the FY 2012 Hospice Wage Index final rule (76 FR 47308 through 47314) it was announced that beginning in 2012, the hospice aggregate cap would be calculated using the patient-by-patient proportional methodology, within certain limits. Existing hospices had the option of having their cap calculated through the original streamlined methodology, also within certain limits. As of FY 2012, new hospices have their cap determinations calculated using the patient-by-patient proportional methodology. If a hospice's total Medicare payments for the cap year exceed the hospice aggregate cap, then the hospice must repay the excess back to Medicare.

7. IMPACT Act of 2014

The Improving Medicare Post-Acute Care Transformation Act of 2014 (IMPACT Act) (Pub. L. 113–185) became law on October 6, 2014. Section 3(a) of the IMPACT Act mandated that all Medicare certified hospices be surveyed every 3 years beginning April 6, 2015 and ending September 30, 2025. In addition, section 3(c) of the IMPACT Act requires medical review of hospice cases involving beneficiaries receiving more than 180 days of care in select hospices that show a preponderance of such patients; section 3(d) of the IMPACT Act mandates that the cap amount for accounting years that end after September 30, 2016, and before October 1, 2025, be updated by the hospice payment percentage update rather than using the consumer price index for urban consumers (CPI-U) for medical care expenditures.

8. FY 2015 Hospice Wage Index and Payment Rate Update Final Rule

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50452) finalized a requirement that the Notice of Election (NOE) be filed within 5 calendar days after the effective date of hospice election. If the NOE is filed beyond this 5-day period, hospice providers are liable for the services furnished during the days from the effective date of hospice election to the date of NOE filing (79 FR 50474). As with the NOE, the claims processing system must be notified of a beneficiary's discharge from hospice or hospice benefit revocation within 5 calendar days after the effective date of the discharge/revocation (unless the hospice has already filed a final claim) through the submission of a final claim or a Notice of Termination or Revocation (NOTR).

The FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50479) also finalized a requirement that the election form include the beneficiary's choice of attending physician and that the beneficiary provide the hospice with a signed document when he or she chooses to change attending physicians.

In addition, the FY 2015 Hospice Wage Index and Rate Update final rule (79 FR 50496) provided background, described eligibility criteria, identified survey respondents, and otherwise implemented the Hospice Experience of Care Survey for informal caregivers. Hospice providers were required to begin using this survey for hospice patients as of 2015.

Finally, the FY 2015 Hospice Wage Index and Rate Update final rule required providers to complete their

aggregate cap determination not sooner than 3 months after the end of the cap year, and not later than 5 months after, and remit any overpayments. Those hospices that fail to submit their aggregate cap determinations on a timely basis have their payments suspended until the determination is completed and received by the Medicare contractor (79 FR 50503).

9. FY 2016 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142), CMS finalized two different payment rates for RHC: a higher per diem base payment rate for the first 60 days of hospice care and a reduced per diem base payment rate for subsequent days of hospice care. We also finalized a service intensity add-on (SIA) payment payable for certain services during the last 7 days of the beneficiary's life. A service intensity add-on payment will be made for the social worker visits and nursing visits provided by a registered nurse (RN), when provided during routine home care in the last 7 days of life. The SIA payment is in addition to the routine home care rate. The SIA payment is provided for visits of a minimum of 15 minutes and a maximum of 4 hours per day (80 FR 47172).

In addition to the hospice payment reform changes discussed, the FY 2016 Hospice Wage Index and Rate Update final rule implemented changes mandated by the IMPACT Act, in which the cap amount for accounting years that end after September 30, 2016 and before October 1, 2025, would be updated by the hospice payment update percentage rather than using the CPI-U (80 FR 47186). In addition, we finalized a provision to align the cap accounting year for both the inpatient cap and the hospice aggregate cap with the FY for FY 2017 and thereafter. Finally, the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47144) clarified that hospices would have to report all diagnoses on the hospice claim as a part of the ongoing data collection efforts for possible future hospice payment refinements.

10. FY 2017 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR 52160), we finalized several new policies and requirements related to the HQR. First, we codified the policy that if a Consensus-Based Entity (CBE), as noted in section 1890 of the Social

Security Act,³ made non-substantive changes to specifications for HQRPs as part of the measure re-endorsement process, we would continue to utilize the measure in its new endorsed status, without going through new notice-and-comment rulemaking. We would also continue to use rulemaking to adopt substantive updates made by the CBE to the endorsed measures adopted for the HQRPs; determinations about what constitutes a substantive versus non-substantive change would be made on a measure-by-measure basis. Second, we finalized two new quality measures for the HQRPs for the FY 2019 payment determination and subsequent years: Hospice Visits when Death is Imminent Measure Pair and Hospice and Palliative Care Composite Process Measure—Comprehensive Assessment at Admission (81 FR 52173). The data collection mechanism for both of these measures is the Hospice Item Set (HIS), and the measures were effective April 1, 2017. Regarding the CAHPS® Hospice Survey, we finalized a policy that hospices that receive their CMS Certification Number (CCN) after January 1, 2017 for the FY 2019 Annual Payment Update (APU) and January 1, 2018 for the FY 2020 APU will be exempted from the Hospice CAHPS® requirements due to newness (81 FR 52182). The exemption is determined by CMS and is only for 1 year.

11. FY 2020 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38484), we finalized rebased payment rates for CHC and GIP and set those rates equal to their average estimated FY 2019 costs per day. We also rebased IRC per diem rates equal to the estimated FY 2019 average costs per day, with a reduction of 5 percent to the FY 2019 average cost per day to account for coinsurance. We finalized the FY 2020 proposal to reduce the RHC payment rates by 2.72 percent to offset the increases to CHC, IRC, and GIP payment rates to implement this policy in a budget-neutral manner in accordance with section 1814(i)(6) of the Act (84 FR 38496).

In addition, we finalized a policy to use the current year's pre-floor, pre-

reclassified hospital inpatient wage index as the wage adjustment to the labor portion of the hospice rates. Finally, in the FY 2020 Hospice Wage Index and Rate Update final rule (84 FR 38505), we finalized modifications to the hospice election statement content requirements at § 418.24(b) by requiring hospices, upon request, to furnish an election statement addendum effective beginning in FY 2021. The addendum must list those items, services, and drugs the hospice has determined to be unrelated to the terminal illness and related conditions, increasing coverage transparency for beneficiaries under a hospice election.

12. Consolidated Appropriations Act, 2021 (CAA, 2021)

Division CC, section 404 of the CAA, 2021, amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket percentage increase (also referred to as the hospital market basket update) reduced by the productivity adjustment) rather than the CPI-U for accounting years that end after September 30, 2016 and before October 1, 2030. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI-U beginning on October 1, 2025. Division CC, section 407(b) of CAA, 2021 revised section 1814(i)(5)(A)(i) of the Act to increase the payment reduction for hospices who failed to meet hospice quality measure reporting requirements from 2 percent to 4 percent beginning with FY 2024.

13. Consolidated Appropriations Act, 2022 (CAA, 2022)

Division P, section 312 of the CAA, 2022 (Pub. L. 117–103) amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket percentage increase reduced by the productivity adjustment) rather than the CPI-U for accounting years that end after September 30, 2016 and before October 1, 2031. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI-U beginning on October 1, 2030.

14. FY 2022 Hospice Wage Index and Payment Rate Update Final Rule

In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42532

through 42539), we finalized a policy to rebase and revise the labor shares for CHC, RHC, IRC, and GIP using Medicare cost report (MCR) data for freestanding hospices (collected via CMS Form 1984–14, OMB No. 0938–0758) for 2018. We established separate labor shares for CHC, RHC, IRC, and GIP based on the calculated compensation cost weights for each level of care from the 2018 MCR data. The revised labor shares were implemented in a budget neutral manner through the use of labor share standardization factors. In the FY 2022 Hospice Wage Index and Rate Update final rule, we removed the seven original Hospice Item Set (HIS) measures from the program because a more broadly applicable measure (across settings, populations, or conditions) for the particular topic is available and already publicly reported. The Hospice Comprehensive Assessment Measure is one measure that is calculated and rolled-up by completion of the seven individual measures. This measure helps to ensure all hospice patients receive a holistic comprehensive assessment. In August 2022, we began publicly reporting the two new claims-based measures. Specifically, this includes the: (1) Hospice Visits in the Last Days of Life (HVLDDL) (which replaces the HIS Hospice Visits when Death is Imminent measure pair); and (2) Hospice Care Index (HCI) that includes 10 indicators that collectively represent different aspects of hospice care and aim to convey a comprehensive characterization of the quality of care furnished by a hospice throughout the hospice stay. Related to these changes, we finalized reporting eight quarters of claims data in order to display small providers. We finalized the public reporting of Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey Star ratings on Care Compare to begin no sooner than FY 2022.

15. Consolidated Appropriations Act, 2023 (CAA, 2023)

Division FF, section 4162 of the CAA, 2023 amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket percentage increase reduced by the productivity adjustment), rather than the CPI-U for accounting years that end after September 30, 2016 and before October 1, 2032. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap

³ Section 1890 of the Social Security Act requires the Secretary of HHS to contract with a Consensus-based Entity (CBE) regarding performance measurement. The National Quality Forum (NQF) was the CBE from 2010–2023. Battelle Memorial Institute has been contracted as the CBE from March 2023–March 2028. In this rule and henceforth, references to NQF will be replaced with CBE.

amount by the CPI-U beginning on October 1, 2031.

III. Provisions of the Proposed Rule

A. Hospice Utilization and Spending Patterns

CMS provides analyses of hospice utilization measures such as Medicare spending; level of care utilization; lengths of stay; live discharge rates; as well as services used outside of the hospice benefit while a patient is under a hospice election, using the most recent, complete claims data.

Stakeholders report that such information can be used to educate hospices on Medicare policies to help

ensure compliance. Moreover, in response to the Office of Inspector General (OIG) reports highlighting vulnerabilities in the Medicare hospice benefit (for example, hospices engaging in inappropriate billing, not providing needed services and crucial information to beneficiaries in order for them to make informed decisions about their care⁴), we continue to monitor both hospice and non-hospice spending under the hospice benefit.

1. General Hospice Utilization Trends

Since the implementation of the hospice benefit in 1983, there has been substantial growth in utilization of the

hospice benefit. The number of Medicare beneficiaries receiving hospice services has grown from 715,349 in Federal FY 2003 to over 1.7 million in FY 2022. Medicare hospice expenditures have risen from \$5 billion in FY 2003 to approximately \$23 billion in FY 2022.⁵ CMS' Office of the Actuary expects aggregate hospice expenditures will continue to increase by approximately 9.1 percent annually.

The percentage of Medicare decedents who died while receiving services under the Medicare hospice benefit increased from FY 2013 to FY 2019, but then slowly declined from FY 2019 through FY 2022, as shown in Table 1.

TABLE 1—DEATHS IN HOSPICE BY FISCAL YEAR

FY	Total deaths of medicare beneficiaries	Deaths of medicare beneficiaries using hospice	Percentage of deaths in hospice (%)
2013	2,137,210	1,008,696	47.2
2014	2,123,163	1,019,681	48.0
2015	2,223,276	1,073,414	48.3
2016	2,206,351	1,090,208	49.4
2017	2,277,722	1,142,726	50.2
2018	2,328,210	1,183,284	50.8
2019	2,326,932	1,208,997	52.0
2020	2,578,741	1,290,390	50.0
2021	2,807,442	1,339,339	47.7
2022	2,695,584	1,314,765	48.8

Source: Analysis of data for FYs 2013 through 2022 accessed from the CCW on January 20, 2023.

Note: Hospice deaths are counted as any hospice claim with a discharge status code of "40", "41", or "42".

Similar to the increase in the number of beneficiaries using the benefit, the total number of organizations offering hospice services also continues to grow, with for-profit providers entering the market at higher rates than not-for-profit providers. In its March 2023 Report to the Congress,⁶ MedPAC stated that for more than a decade, the increasing number of hospice providers is due almost entirely to the entry of for-profit providers. MedPAC also stated that long stays in hospice have been very profitable and this has attracted new provider entrants with revenue-generating strategies specifically targeting those patients expected to have longer lengths of stay. MedPAC has also stated that private equity involvement in the health care sector has been

growing and that private equity funds have invested in home health and hospice.⁷ In FY 2022, approximately 74 percent (4,204 out of 5,689) of hospices were for-profit and approximately 16 percent (897 out of 5,689) were non-profit, whereas in FY 2016, approximately 65 percent (2,842 out of 4,373) were for-profit and approximately 23 percent (991 out of 4,373) of hospices were non-profit. In FY 2022, for-profit hospices provided approximately 64 percent of all hospice days while non-profit hospices provided approximately 27 percent of all hospice days.⁸ Hospices that listed their ownership status as "Other", "Government", or had an unknown ownership status accounted for the remaining 9 percent of hospice days.

There have been notable changes in the pattern of diagnoses among Medicare hospice enrollees since the implementation of the Medicare hospice benefit from primarily cancer diagnoses to neurological diagnoses, including Alzheimer's disease and other related dementias (80 FR 25839). These patterns are consistent across all hospices regardless of ownership type. Our ongoing analysis of diagnosis reporting finds that neurological and organ-based failure conditions remain the top-reported principal diagnoses. Beneficiaries with these terminal conditions tend to have longer hospice stays, which have historically been

⁴ "Hospice Inappropriately Billed Medicare Over \$250 Million for General Inpatient Care", OEI-02-10-00491, March, 2016. "Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity: An OIG Portfolio", OEI-02-16-00570, July, 2018.

⁵ Analysis of data for FY 2003 through FY 2022 accessed from the Chronic Conditions Data Warehouse (CCW) on January 20, 2023.

⁶ Report to Congress, Medicare Payment Policy. Hospice Services, Chapter 10. MedPAC. March 2023. [https://www.medpac.gov/wp-content/](https://www.medpac.gov/wp-content/uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf)

[uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf](https://www.medpac.gov/wp-content/uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf).

⁷ Report to Congress, Medicare and the Healthcare Delivery System. Congressional Request: Private equity and Medicare. June 2021. https://www.medpac.gov/wp-content/uploads/import_data/scrape_files/docs/default-source/default-document-library/jun21_ch3_medpac_report_to_congress_sec.pdf.

⁸ FY 2016–FY 2022 hospice claims data from CCW on January 20, 2023. Fourth quarter 2022 Provider of Service (POS) File ([https://](https://www.cms.gov/files/zip/posothercsvdec19.zip)

www.cms.gov/files/zip/posothercsvdec19.zip). Using the analytic file, we found there were 5,689 hospices that submitted at least one claim in FY 2022. Of those, we show the frequency of their ownership type as shown in the POS file. For-profit hospices include the "proprietary" categories. Non-profit includes the "voluntary non-profit" categories. Government includes the "Government" categories and the "Combination Government & Nonprofit" option. Other represents the "other" category. Thirty-nine hospices could not be linked to the POS file and are listed as unknown.

more profitable than shorter stays.⁹
Table 2 shows the top 20 most

frequently reported principal diagnoses
on FY 2022 hospice claims.

TABLE 2—TOP TWENTY PRINCIPAL HOSPICE DIAGNOSES
[FY 2022]

Rank	International classification of diseases, tenth revision (ICD–10)/reported principal diagnosis	Number of beneficiaries	Percentage of all reported principal diagnoses (%)
1	G30.9—Alzheimer disease, unspecified	135,910	7.4
2	G31.1—Senile degeneration of brain, not elsewhere classified	124,365	6.8
3	J44.9—Chronic obstructive pulmonary disease, unspecified	78,630	4.3
4	G30.1—Alzheimer disease with late onset	63,980	3.5
5	I50.9—Heart failure, unspecified	52,375	2.8
6	G20—Parkinson disease	52,155	2.8
7	I25.10—Atherosclerotic heart disease of native coronary artery without angina pectoris	47,117	2.6
8	C34.90—Malignant neoplasm of unspecified part of unspecified bronchus or lung	44,093	2.4
9	U07.1—Emergency use of U07.1	43,505	2.4
10	I67.2—Cerebral atherosclerosis	38,543	2.1
11	I11.0—Hypertensive heart disease with (congestive) heart failure	36,860	2.0
12	I67.9—Cerebrovascular disease, unspecified	35,120	1.9
13	E43—Unspecified severe protein-energy malnutrition	33,111	1.8
14	I63.9—Cerebral infarction, unspecified	29,291	1.6
15	I13.0—Hypertensive heart and renal disease with (congestive) heart failure	27,455	1.5
16	C61—Malignant neoplasm of prostate	24,806	1.3
17	N18.6—End stage renal disease	24,565	1.3
18	J96.01—Acute respiratory failure with hypoxia	23,329	1.3
19	C25.9—Malignant neoplasm: Pancreas, unspecified	22,128	1.2
20	J44.1—Chronic obstructive pulmonary disease with acute exacerbation, unspecified	20,928	1.1

Source: Analysis of data for FY 2022 accessed from the CCW on January 20, 2023.

Notes: The frequencies shown represent beneficiaries that had a least one claim with the specific ICD–10 code reported as the principal diagnosis. Beneficiaries could be represented multiple times in the results if they had multiple claims during FY 2022 with different principal diagnoses. The percentage column represents the percentage of beneficiary/diagnosis pairs in a fiscal year with a specific ICD–10 code.

Hospice Utilization by Level of Care

Our analysis shows that there have only been slight changes over time in

how hospices have utilized the different levels of care. RHC consistently represents the highest percentage of

total hospice days as well as the highest percentage of total hospice payments as shown in Table 3.

TABLE 3—PERCENT OF HOSPICE DAYS AND PAYMENTS BY LEVEL OF CARE, FY 2013 AND FY 2022

Level of Care	Percent of hospice days, FY 2013 (%)	Percent of hospice days, FY 2022 (%)	Percent of payments, FY 2013 (%)	Percent of payments, FY 2022 (%)
RHC	97.5	98.8	90.6	93.7
CHC	0.4	0.1	1.8	0.6
IRC	0.3	0.3	0.3	0.7
GIP	1.8	0.9	7.3	5.0

Source: Analysis of data for FY 2013 through FY 2022 accessed from the CCW on Jan 20, 2023.

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38496), we rebased the payment rates for the CHC, IRC, and GIP levels of care to better align hospice payment with the costs of providing care. It was our intent that rebasing these rates would adequately cover the costs of providing these higher intensity levels of care to ensure that hospices have access to the providers needed to comply with the hospice Conditions of Participation (CoPs), and promote patient access to all levels of care.

Figure 1 shows that, despite rebasing payment rates for the higher levels of care, there still remains a high percentage of hospices that provide little to no CHC, IRC, or GIP.

We find that for-profit hospices make up 71.6 percent of hospices from FY 2019 through FY 2022, and that for-profit hospices make up 82.9 percent of the hospices that do not provide GIP in a given FY and 84.3 percent of the hospices that do not provide IRC in a given FY. Conversely, for-profit hospices make up 68.5 percent of the

hospices that provide CHC in a given FY, indicating for-profit hospices are more likely to provide CHC compared to other ownership types. Hospices that are unable, or unwilling, to provide higher levels of care such as CHC and GIP may not adequately be able to care for patients who are in crisis or have symptoms that cannot be managed in the home, resulting in a worse outcome for the patient. Furthermore, not providing those levels of care, and also not providing IRC, places a greater burden on caregivers which may worsen

⁹ Report to Congress, Medicare Payment Policy. Hospice Services, Chapter 10. MedPAC. March

2023. [https://www.medpac.gov/wp-content/](https://www.medpac.gov/wp-content/uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf)

[uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf](https://www.medpac.gov/wp-content/uploads/2023/03/Ch10_Mar23_MedPAC_Report_To_Congress_SEC.pdf).

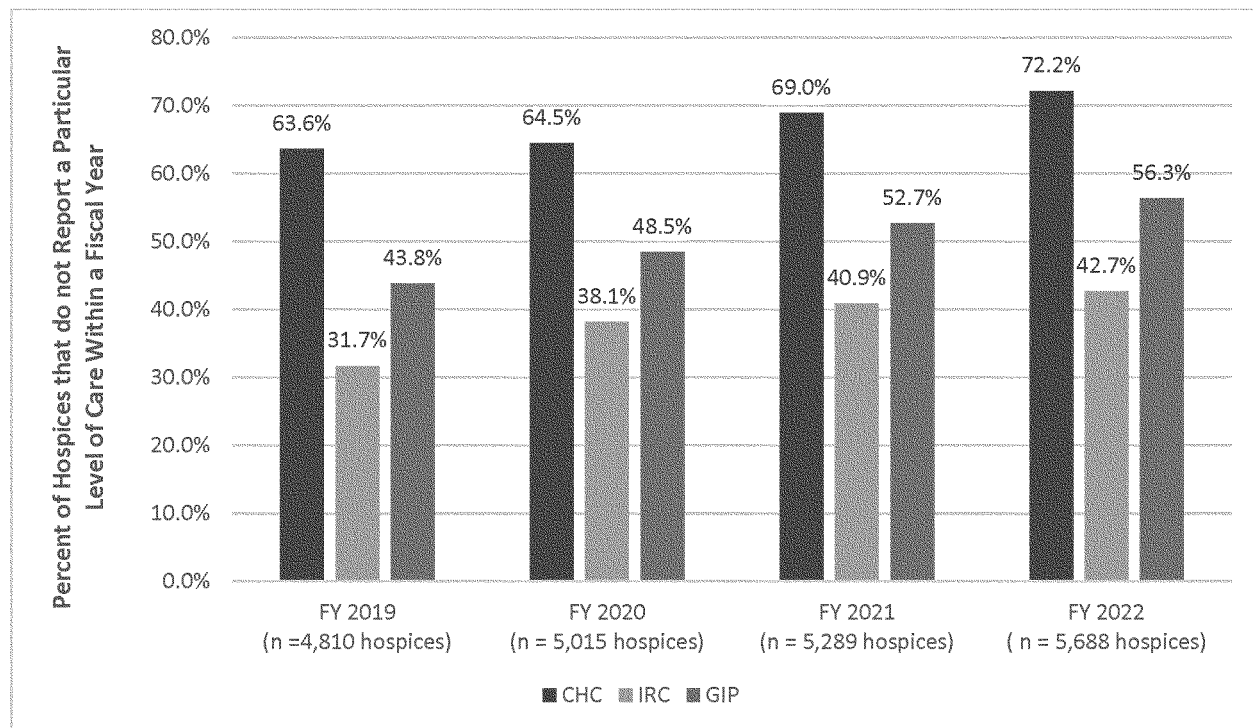
the quality of care at the end of life. Also, most hospices that do not provide a particular level of care amongst CHC, IRC, and GIP are more likely to be in the bottom 25 percent of hospices across all FYs. That is, the bottom 25 percent of hospices, which are the smallest from

FY 2019 through FY 2022 make-up 40.6 percent of hospices that do not provide GIP in a given FY and make up 50.8 percent of the hospices that do not provide IRC in a given FY. The smallest hospices make up 27.7 percent of the hospices that do not provide CHC in a

given FY, meaning that group of small hospices has only a slightly higher rate of providing than would be expected otherwise.

BILLING CODE 4120-01-P

Figure 1: Percent of Hospices Providing No Instances of CHC, IRC, GIP Care in FYs 2019-2022



Source: Analysis of data for FY 2019 through FY 2022 accessed from the CCW on January 20, 2023.

2. Trends in Hospice Length of Stay and Live Discharges

Eligibility under the Medicare hospice benefit is predicated on the individual being certified as terminally ill. Medicare regulations at § 418.3 define “terminally ill” to mean that the individual has a medical prognosis of life expectancy 6 months or less if the illness runs its normal course. However, we recognize that a beneficiary may be under a hospice election longer than 6 months, and the beneficiary is still eligible as long as there remains a

reasonable expectation that the individual has a life expectancy of 6 months or less. It has always been our expectation that the certifying physicians would use their best clinical judgment, as described in our regulations at §§ 418.22 and 418.25, to determine if an individual has a life expectancy of 6 months or less with each certification and recertification.

Hospice Length of Stay

We examined hospice length of stay in three ways: (1) average length of election, meaning the number of

hospice days during a single hospice election at the time of live discharge or death; (2) the median lifetime length of stay, which represents the 50th percentile, and (3) average lifetime length of stay, which includes the sum of all days of hospice care across all hospice elections. Extremely long lengths of stay influence both the average length of election and average lifetime length of stay. Table 4 shows the average length of election, the median and average lifetime lengths of stay from FYs 2019 through 2022.

TABLE 4—HOSPICE LENGTH OF STAY IN DAYS FYs 2019–2022

	FY 2019	FY 2020	FY 2021	FY 2022
Average Length of Election	77	79	79	80
Median Lifetime Length of Stay	20	19	18	19
Average Lifetime Length of Stay	99	100	100	102

Source: Hospice claims data accessed from the CCW on January 20, 2023.

Length of stay estimates vary based on the reported principal diagnosis. Table 5 lists six of the most common clinical categories of principal diagnoses reported on hospice claims in FY 2022

along with the corresponding number of hospice discharges. Patients with neurological and organ-based failure conditions (with the exception of kidney disease/kidney failure) tend to

have much longer lengths of stay compared to patients with cancer diagnoses.

TABLE 5—AVERAGE LENGTH OF STAY IN DAYS FOR HOSPICE USERS IN FY 2022

Category	Number of hospice users discharged at the end of FY 2022	Average length of election	Median lifetime length of stay	Average lifetime length of stay
Alzheimer's, Dementia, and Parkinson's	286,884	129.0	50	170.2
CVA/Stroke	135,336	97.4	21	125.3
Cancers	350,889	46.5	16	53.8
Chronic Kidney Disease	33,624	32.8	7	41.1
Heart (CHF and Other Heart Diseases)	241,166	90.7	25	115.3
Lung (COPD and Pneumonias)	142,517	72.2	11	95.1
Other	181,948	52.6	10	66.5
All Diagnoses	1,372,364	79.9	19	101.7

Source: Hospice claims data accessed from the CCW on January 20, 2023.

Notes: Only beneficiaries whose last day of hospice in FY 2022 was not associated with a discharge status code of “30” were counted (“30” indicates they remained in hospice). We count the start of an election as when a patient begins hospice and is not already within a hospice election. We count elections as ending when we observe a discharge status code other than “30”. Lifetime length of stay is determined using all hospice elections over the beneficiary's lifetime.

Hospice Live Discharges

Federal regulations limit the circumstances in which a Medicare hospice provider may discharge a patient from its care. In accordance with § 418.26, discharge from hospice care is permissible when the patient moves out of the provider's service area, is determined to be no longer terminally ill, or for cause.¹⁰ Hospices may not discharge the patient at their discretion, even if the care may be costly or inconvenient for the hospice. Additionally, an individual or representative may revoke the individual's election of hospice care at any time during an election period in accordance with the regulations at § 418.28. However, at any time thereafter, the beneficiary may re-elect

hospice coverage at any other hospice election period that they are eligible to receive. Immediately upon hospice revocation, Medicare coverage resumes for those Medicare benefits previously waived with the hospice election. Only the beneficiary (or representative) can revoke the hospice election. A revocation must be in writing and must specify the effective date of the revocation. A hospice cannot revoke a beneficiary's hospice election, nor is it appropriate for hospices to encourage, request, or demand that the beneficiary or his or her representative revoke his or her hospice election.

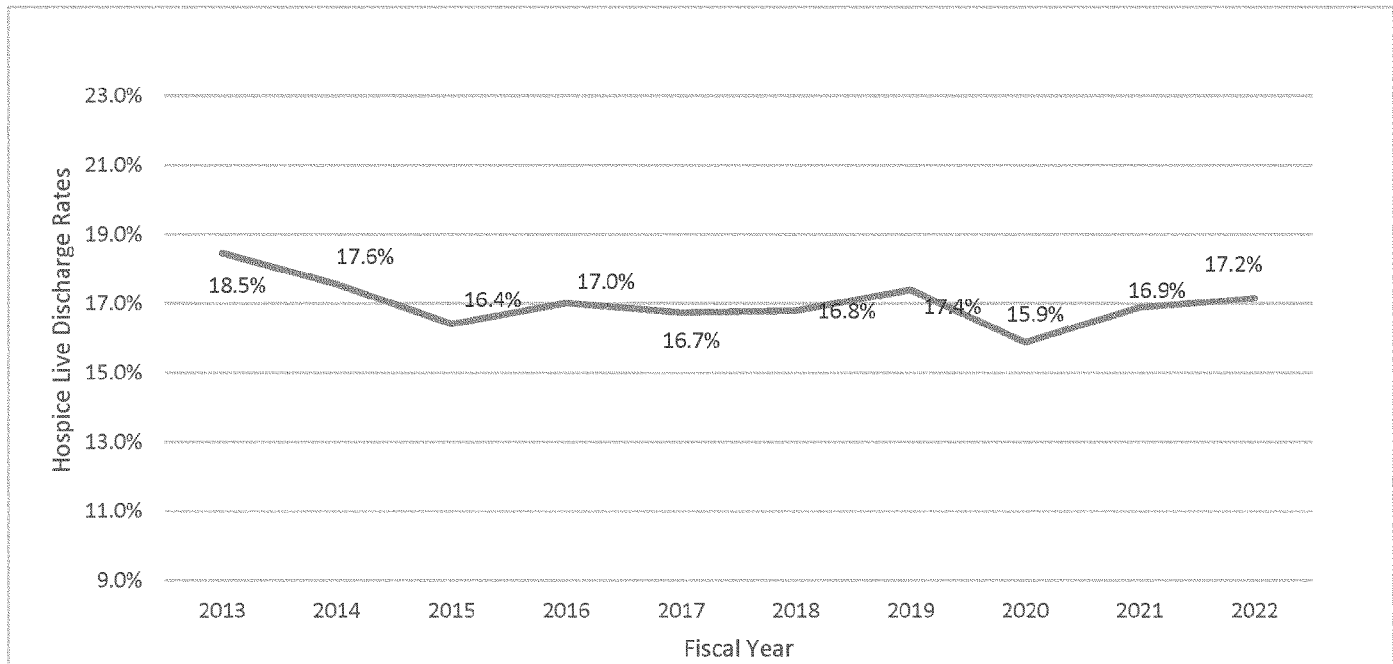
From FY 2013 through FY 2022, the average live discharge rate has been approximately 17 percent per year. Of the live discharges in FY 2022, 35 percent were because of revocations, 36

percent were because the beneficiary was determined to no longer be terminally ill, 14.2 percent were because beneficiaries moved out of the service area without transferring hospices, and 12.9 percent were because beneficiaries transferred to another hospice. The remaining 1.9 percent were discharged for cause. The rate of live discharge varies by ownership status, where non-profit hospices have live discharge rates of approximately 12 percent per year, for-profit hospices have approximately 21–22 percent of live discharges per year, and government/other types of hospices have live discharge rates of approximately 15 percent per year. Figure 2 shows the average annual rates of live discharge from FYs 2013 through 2022.

¹⁰ Live discharge “for cause” is defined in Chapter 9, Section 20.2.3 of the Hospice Benefit

Policy Manual. [https://www.cms.gov/Regulations-](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf)

[and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf](https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf).

Figure 2: Annual Live Discharge Rates for FYs 2013 –2022

Source: Analysis of data for FY 2013 through FY 2022 accessed from the CCW on January 20, 2023.

Notes: All hospice claims examined list a discharge status code (meaning claims were excluded if they listed status code 30, indicating a continuing patient). Discharges ending in death had a discharge status code of 40, 41, or 42.

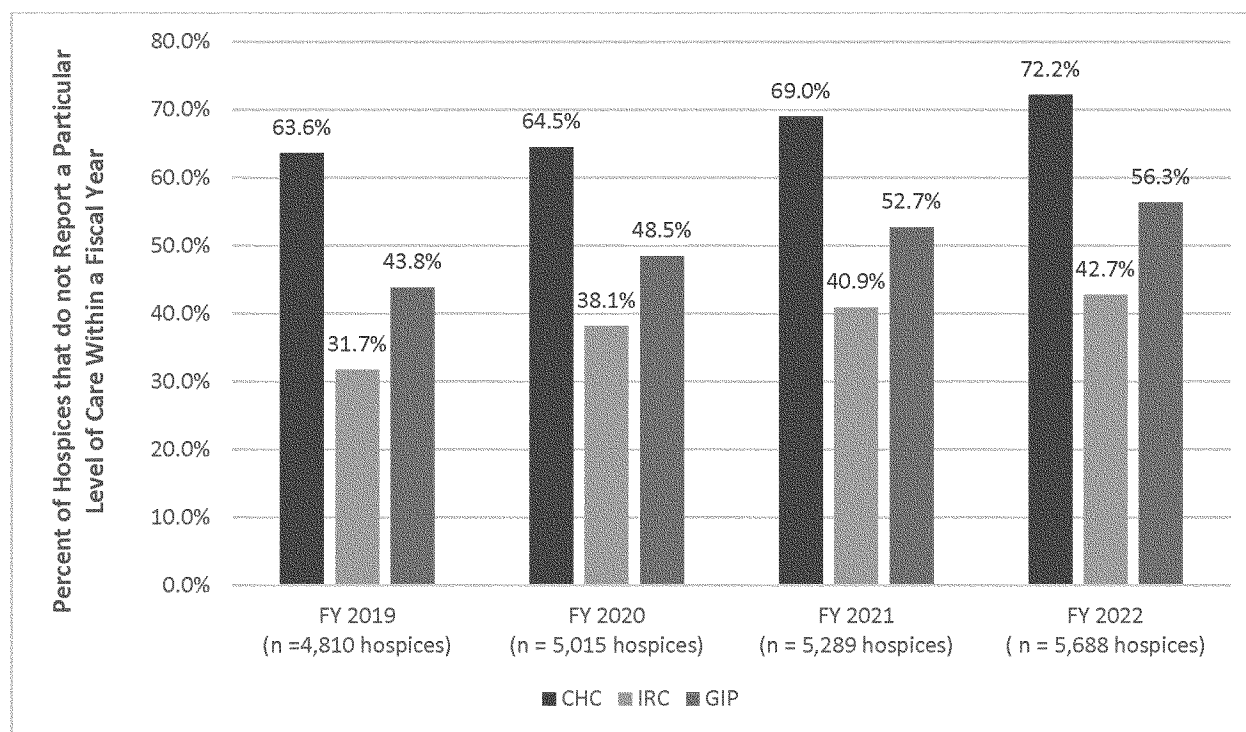
Any claims not already excluded or that indicated a discharge resulting from death were considered live discharges.

Finally, we looked at the distribution of live discharges by length of stay intervals. Figure 3 shows the live discharge rates by length of stay intervals from FY 2019 through FY 2022. We found that the majority of live

discharges occur in the first 30 days of hospice care and after 180 days of hospice care. The proportion of live discharges occurring between the lengths of stay intervals was relatively constant from FY 2019 to FY 2022

where approximately 25 percent of live discharges occurred within 30 days of the start of hospice care, and approximately 33 percent occurred after a length of stay over 180 days of hospice care.

Figure 3: Length of Stay Intervals Distribution for Live Discharges, FYs 2019 to 2022



Source: Analysis of data for FY 2019 through FY 2022 accessed from the CCW on January 20, 2023.

Notes: All hospice claims examined list a discharge status code (meaning claims were excluded if they listed status code 30, indicating they were a continuing patient). Discharges ending in death had a discharge status code of 40, 41, or 42. Any claims not already excluded or that indicated a discharge resulting from death were considered live discharges.

Non-Hospice Spending During a Hospice Election

The Medicare hospice per diem payment amounts were developed to cover all services needed for the palliation and management of the terminal illness and related conditions, as described in section 1861(dd)(1) of the Act. Hospice services provided under a written plan of care (POC) should reflect patient and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments. As referenced in our regulations at § 418.64 and section II.B of this proposed rule, a hospice must routinely provide all core services directly by hospice employees and they must be provided in a manner consistent with acceptable standards of practice. Under the current payment system, hospices are paid for each day that a beneficiary is enrolled in hospice

care, regardless of whether services are rendered on any given day.

Additionally, when a beneficiary elects the Medicare hospice benefit, he or she waives the right to Medicare payment for services related to the treatment of the terminal illness and related conditions, except for services provided by the designated hospice and the attending physician. The comprehensive nature of the services covered under the Medicare hospice benefit is structured so that hospice beneficiaries would not have to routinely seek items, services, and medications beyond those provided by hospice. We believe that it would be unusual and exceptional to see services provided outside of hospice for those individuals who are approaching the end of life and we have reiterated since 1983 that “virtually all” care needed by the terminally ill individual would be provided by the hospice.

In examining overall non-hospice spending during a hospice election, Medicare paid over \$1.4 billion in non-hospice spending during a hospice election in FY 2022 for items and services under Parts A, B, and D Medicare payments for non-hospice Part A and Part B items and services received by hospice beneficiaries during a hospice election increased from \$685 million in FY 2019 to nearly \$883 million in FY 2022 (see Figure 4). This represents an increase in non-hospice Medicare spending for Parts A and B of 28.9 percent. Whereas, there is minimal beneficiary cost sharing under the Medicare hospice benefit,¹¹ non-hospice services received outside of the Medicare hospice benefit are subject to beneficiary cost sharing. In FY 2022, the total beneficiary cost sharing amount for beneficiaries electing the hospice benefit was \$197 million for Parts A and B.¹² In FY 2022, beneficiaries receiving hospice services from for-profit hospices

¹¹ The amount of coinsurance for each prescription approximates five percent of the cost of the drug or biological to the hospice determined in accordance with the drug copayment schedule established by the hospice, except that the amount

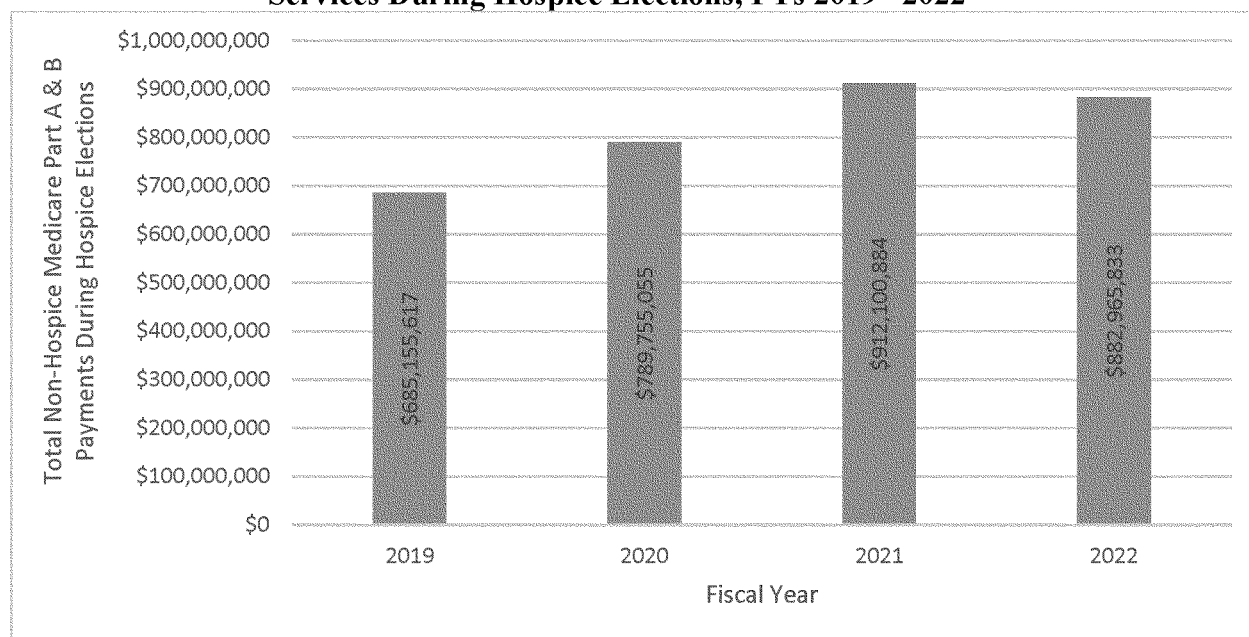
of coinsurance for each prescription may not exceed \$5. The amount of coinsurance for each respite care day is equal to five percent of the payment made by CMS for a respite care.

¹² Part A and B cost sharing is calculated by summing together the deductible and coinsurance amounts for each claim.

had, on average, 60 percent higher non-hospice spending per day compared to

beneficiaries under non-profit hospice care.

Figure 4: Medicare Payments for Non-Hospice Medicare Part A and Part B Items and Services During Hospice Elections, FYs 2019 –2022



Source: Analysis of 100% Medicare Part A and B claims analytic files, FYs 2019 – 2022, from the CCW, accessed January 20, 2023.

Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

We also examined non-hospice spending during a hospice election by claim type for Parts A and B, as shown in Table 6. In percentage terms, we found a notable increase in billing related to skilled nursing facility claims in recent years. From FY 2019 to FY

2020, non-hospice spending related to skilled nursing facilities (SNFs) increase by 323 percent and then increased another 49 percent between FY 2020 and FY 2021. We found that roughly half of the SNF non-hospice spending that occurred in FY 2020 and FY 2021

was driven by SNF claims with a diagnosis of COVID-19. We also found that in FY 2022 SNF spending has declined, which may coincide with a reduction in COVID-19 cases.

TABLE 6—TOTAL MEDICARE SPENDING OUTSIDE THE HOSPICE BENEFIT DURING DAYS OF HOSPICE SERVICE (EXCLUDING ADMISSION/LIVE DISCHARGE DAYS) BY CLAIM TYPE [ALL BENEFICIARIES]
[FYs 2019–2022]

Claim type	FY 2019	FY 2020	FY 2021	FY 2022
Durable Medical Equipment	\$54,366,410	\$62,911,894	\$53,089,457	\$57,214,990
Home Health Agency	16,274,533	17,207,271	16,600,988	15,391,571
Inpatient	135,556,881	152,237,654	164,126,999	144,970,909
Outpatient	134,890,458	144,512,733	161,433,749	150,063,938
Physician Billing	334,867,809	374,275,518	459,259,144	471,598,388
Skilled Nursing Facility	9,199,526	38,609,985	57,590,547	43,726,037
Total	685,155,617	789,755,055	912,100,884	882,965,833

Source: Analysis of 100% Medicare Part A and B claims analytic files, FYs 2019–2022, from the CCW, accessed January 20, 2023.

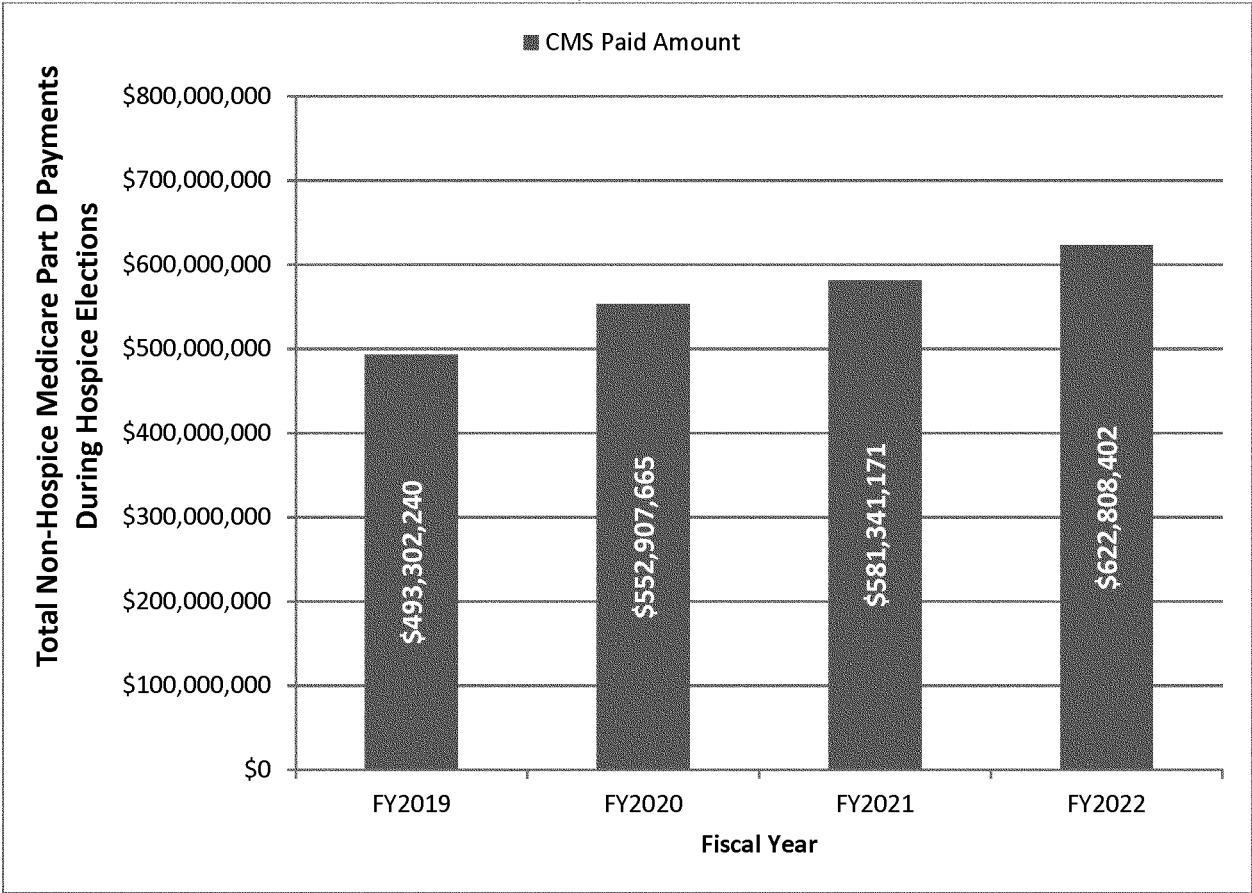
Notes: Payments are based on estimated total non-hospice Medicare utilization (\$) per hospice service day, excluding utilization on hospice admission or live discharge days. Only Medicare paid amounts are included. The Medicare paid amounts were equally apportioned across the length of each claim and only the days that overlapped a hospice election (not including hospice admission or live discharge days) were counted.

Hospices are responsible for covering drugs and biologicals related to the palliation and management of the terminal illness and related conditions while the patient is under hospice care. For a prescription drug to be covered under Part D for an individual enrolled in hospice, the drug must be for treatment completely unrelated to the

terminal illness or related conditions. After a hospice election, many maintenance drugs or drugs used to treat or cure a condition are typically discontinued as the focus of care shifts to palliation and comfort measures. However, those same drugs may be appropriate to continue as they may offer symptom relief for the palliation

and management of the terminal prognosis.¹³ Similar to the increase in non-hospice spending during a hospice election for Medicare Parts A and B items and services, non-hospice spending for Part D drugs increased in from \$493 million in FY 2019 to \$623 million in FY 2022 (Figure 5).

Figure 5: Total Payments for Non-Hospice Medicare Part D Drugs During Hospice Elections, FYs 2019- 2022



Source: Analysis of 100% Part D prescription drug events (PDEs), FYs 2019 - 2022 from the CCW Virtual Research Data Center (VRDC) (January 20, 2023).

Notes: The Medicare paid amounts were assigned to hospice days based on the service date on the PDE. Only service dates that fell within a hospice election and were not hospice admission or live discharge days were counted. The Medicare paid amount includes the low-income cost-sharing subsidy and covered drug plan paid amount on Part D PDEs.

Analysis of Part D prescription drug events (PDEs) data suggests that the current use of prior authorization (PA) by Part D sponsors has reduced Part D program payments for drugs in four targeted categories (analgesics, anti-nauseants, anti-anxiety, and laxatives), which are typically used to treat common symptoms experienced during

the end of life. However, under Medicare Part D there has been an increase in hospice beneficiaries filling prescriptions for a separate category of drugs we refer to as maintenance drugs.¹⁴ Under CMS’s current policy, Part D sponsors are not expected to place hospice PA requirements on categories of drugs (other than the four

targeted categories listed above) or take special measures beyond their normal compliance and utilization review activities. Under this policy, sponsors are not expected to place PA requirements on maintenance drugs, for beneficiaries under a hospice election, though these drugs may still be subject to standard Part D formulary

¹³ Update on Part D Payment Responsibility for Drugs for Beneficiaries Enrolled in Medicare Hospice. November 2016. <https://www.cms.gov/>

Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf.

¹⁴ <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2016-11-15-Part-D-Hospice-Guidance.pdf>.

management practices. This policy was put in place in recognition of the operational challenges associated with requiring PA on all drugs for beneficiaries who have elected hospice and because of the potential barriers to access that could be created by requiring PA on all drugs.¹⁵ Examples of maintenance drugs are those used to treat high blood pressure, heart disease, asthma, and diabetes. These categories include beta blockers, calcium channel blockers, corticosteroids, and insulin.

Table 7 details the various components of Part D spending for patients receiving hospice care for FY 2022. The portion of the FY 2022 Part D spending that was paid by Medicare is the sum of the Low-Income Cost-Sharing Subsidy and the Covered Drug Plan Paid Amount, approximately \$623 million. The beneficiary cost sharing amount was approximately \$69 million.¹⁶

TABLE 7—DRUG COST SOURCES FOR HOSPICE BENEFICIARIES' FY 2022 DRUGS RECEIVED THROUGH PART D

Component	FY 2022 expenditures
Patient Pay Amount	\$67,633,318
Low-Income Cost-Sharing Subsidy	169,197,953
Other True Out-of-Pocket Amount	1,547,055
Patient Liability Reduction Due to Other Payer Amount	24,265,070
Covered Drug Plan Paid Amount	453,610,449
Non-Covered Plan Paid Amount	23,197,266
Six Payment Amount Totals	739,451,111
Unknown/Unreconciled	47,238,184
Gross Total Drug Costs, Reported	786,689,295

Source: Analysis of 100% Part D PDEs, FY 2022, from the CCW, accessed January 20, 2023.

Notes: Payments and costs that occur on hospice admission or live discharge days are excluded from the analysis.

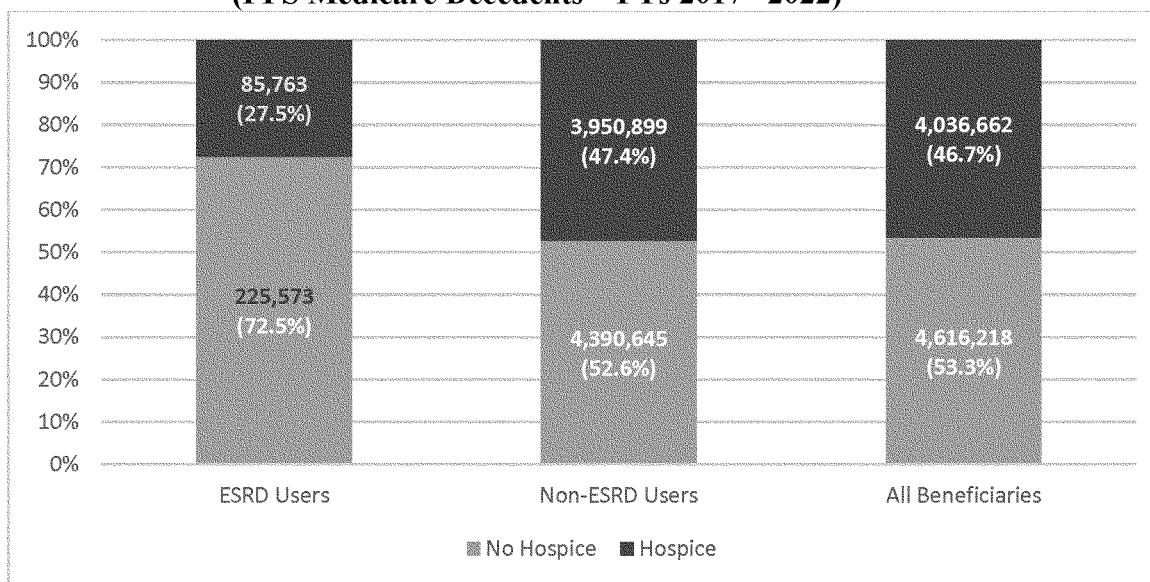
Hospice and End-Stage Renal Disease (ESRD)

Hospice enrollment for Medicare beneficiaries receiving maintenance

dialysis for end-stage renal disease (ESRD) occurs less than half as often and much closer to the time of death, compared to the general Medicare population.

We analyzed fee for service (FFS) Medicare utilization from FYs 2017 through 2022 to better understand how ESRD patients use hospice. Our analysis included 8,991,619 beneficiaries with a date of death from FY 2017 through FY 2022. As shown in Figure 6, during this time period we found there were 85,763 beneficiaries with both hospice and ESRD service claims in the 30 days before death and they make up 27.5 percent of the 311,336 beneficiaries with ESRD services in the 30 days before death. That is a little over half of the rate of hospice use at the end of life compared to the overall rate of hospice use among all Medicare beneficiaries in our sample (46.7 percent). Results are similar when looking at hospice and ESRD service claims in the 14 days before death, 60 days before death, and 90 days before death.

Figure 6: Number and Percent of Beneficiaries Utilizing Hospice in the 30 Days Before Death by Receipt of ESRD Services in the 30 Days Before Death (FFS Medicare Decedents – FYs 2017 –2022)



Source: Analysis of 100% Part A and Part B claims and the Medicare Beneficiary Summary File from FY 2017 – FY 2018, from the CCW, accessed January 20, 2023

¹⁵ Part D Payment for Drugs for Beneficiaries Enrolled in Medicare Hospice. July 18, 2014. [https://www.cms.gov/Medicare/Medicare-Fee-for-](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2014-PartD-Hospice-Guidance-Revised-Memo.pdf)

[Service-Payment/Hospice/Downloads/2014-PartD-Hospice-Guidance-Revised-Memo.pdf](https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Downloads/2014-PartD-Hospice-Guidance-Revised-Memo.pdf).

¹⁶ Part D cost sharing is calculated by summing together the “the patient pay amount” and the “other true out of pocket” amount that are recorded on the Part D PDE.

BILLING CODE 4120-01-C

Separately, we looked at all FFS beneficiaries from FY 2017 through FY 2021 and identified 110,159 beneficiaries who had both ESRD service and hospice claims during that time. For those beneficiaries with no overlap between their hospice and ESRD claims, we examined the number of days that passed from the last ESRD service claim and their day of death.¹⁷ Looking at those beneficiaries who began hospice within 14 days of their last ESRD claim, we find that the average number of days between the last date of the ESRD service and their day of death is 15.2 days. The median is 11 days and 95 percent of beneficiaries have 31 or fewer days between their last date of ESRD service and their day of death.

Our expectation continues to be that hospices offer and provide comprehensive, virtually all-inclusive care. In order to preserve the Medicare hospice benefit and ensure that Medicare beneficiaries have access to comprehensive, high quality and appropriate end-of-life hospice care, we would continue to examine program vulnerabilities and implement safeguards in the Medicare hospice benefit, when appropriate.

a. Request for Information (RFI) on Hospice Utilization; Non-Hospice Spending; Ownership Transparency; and Hospice Election Decision-Making

We define hospice care as a set of comprehensive services, identified and coordinated by an interdisciplinary group to provide for the physical, psychosocial, spiritual, and emotional needs of a terminally ill patient and/or family members, as delineated in a specific patient plan of care (§ 418.3). Hospice care changes the focus to comfort care (palliative care) for pain relief and symptom management instead of care to cure the patient's illness. Under the hospice benefit, palliative care is defined as patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering (§ 418.3). Palliative

care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice. CMS continually works to ensure access to quality hospice care for all eligible Medicare beneficiaries by establishing, refining, readapting, and reinforcing policies to improve the value of care at the end of life for these beneficiaries. That is, we seek to strengthen the notion that in order to provide the highest level of care for hospice beneficiaries, we must provide ongoing focus to those services that enforce CMS' definitions of hospice and palliative care, and eliminate any barriers to accessing hospice care.

Adequate care under the hospice benefit has consistently been demonstrated to be associated with symptom reduction, less intensive care, decreased hospitalizations, improved outcomes from caregivers, lower overall costs and higher alignment with patient preferences and family satisfaction.¹⁸ Although hospice use has grown considerably since the 1983 inception of the Medicare hospice benefit, there are still barriers that terminally ill and hospice benefit eligible beneficiaries may face when trying to access hospice care. Specifically, the national trends¹⁹ that examine hospice enrollment and service utilization for those beneficiary populations with complex palliative needs and potentially high-cost medical care needs reveal that there may be an underuse of the hospice benefit, despite the demonstrated potential to both improve quality of care and lower costs.²⁰

In particular, our analysis in Table 3 illustrates the decrease in the percentages of hospices billing for higher levels of care (LOC) (CHC, GIP, IRC), despite substantial payment rate increases as a result of rebasing beginning in FY 2020 (84 FR 38496). Additionally, as illustrated in Figure 1,

the percentages of hospices providing no CHC, IRC, or GIP have also increased from FY 2019 to FY 2022. We received comments in the FY 2020 final rule (84 FR 38484), noting that the rebased payment rates would help ensure that hospices would have greater access to the contractors and facilities that provide these levels of care, which would ultimately benefit patients and their caregivers due to increased availability. As such, we anticipated that rebasing the payment rates for these three levels would result in an increase in utilization; however, as indicated in section III.A. of this proposed rule, this has not been the case.

It is longstanding that there is a subset of hospice eligible beneficiaries that would likely benefit from receiving palliative rather than curative chemotherapy, radiation, blood transfusions, and dialysis for treatment. The analysis shown in Figure 6 highlights that most beneficiaries that use dialysis shortly before death typically do not use hospice, while comparatively, a smaller subset of beneficiaries with diagnoses unrelated to kidney disease do use hospice and dialysis for several weeks on average. Similarly, anecdotally we have heard from beneficiaries and families their understanding that palliative therapies such as dialysis, chemotherapy, radiation, and blood transfusions are not options upon election of the hospice benefit. Generally, these patients report that they have been told by hospices that Medicare does not allow for the provision of these types of treatments upon hospice election. While these types of treatments are not intended to cure the patient's terminal illness, some practitioners, with input from the hospice interdisciplinary group (IDG), may determine for some patients these adjuvant treatment modalities would be beneficial for symptom control. In these instances, these palliative treatments would be covered under the hospice benefit.

These persistent decreases in the use of higher LOC (even after increased payments) and limited higher cost palliative treatments under the hospice benefit, suggest that there may be some barriers for those beneficiary populations with complex palliative needs to access higher LOC. These findings are contrary to the manner by which CMS strives to set the stage for eliminating barriers for eligible beneficiaries, and reduces access to hospice care that is wholly patient centered, uses a multidisciplinary care team in medical decision making, is coordinated across settings, reduces unnecessary hospitalizations, and saves

¹⁷ For the analysis, we begin with 110,159 beneficiaries. We first exclude beneficiaries with one or more days of overlap between a hospice claim and an ESRD service claim (n = 24,095). We then exclude beneficiaries whose first day of hospice is not after their last ESRD service date (n = 7,235). Next, we exclude beneficiaries whose last hospice date is recorded as occurring after their day of death (n = 122). Finally, we exclude beneficiaries if they started hospice 14 days or more after their last ESRD service claim (n = 24,420). After the exclusions, we are left with 54,287 beneficiaries. For this analysis we do not require a beneficiary to remain continuously enrolled in hospice until death, although for most beneficiaries that does occur.

¹⁸ Obermeyer Z, Makar M, Abujaber S, Dominici F, Block S, Cutler DM. Association Between the Medicare Hospice Benefit and Health Care Utilization and Costs for Patients With Poor-Prognosis Cancer. *JAMA*. 2014;312(18):1888–1896. doi:10.1001/jama.2014.14950.

¹⁹ Wachterman MW, Hailpern SM, Keating NL, Kurella Tamura M, O'Hare AM. Association Between Hospice Length of Stay, Health Care Utilization, and Medicare Costs at the End of Life Among Patients Who Received Maintenance Hemodialysis. *JAMA Intern Med*. 2018 Jun 1;178(6):792–799. doi: 10.1001/jamainternmed.2018.0256. PMID: 29710217; PMCID: PMC5988968.

²⁰ Meier DE. Increased access to palliative care and hospice services: opportunities to improve value in health care. *Milbank Q*. 2011 Sep;89(3):343–80. doi: 10.1111/j.1468-0009.2011.00632.x. PMID: 21933272; PMCID: PMC3214714.

health care dollars. As such, the results of the aforementioned findings serve as a call to action for CMS to address issues related to quality care and access when striving to improve health equity. As we continue to focus on improved access and value within the hospice benefit, we are soliciting public comment on the following questions:

- Are there any enrollment policies for hospices that may be perceived as restrictive to those beneficiaries that may require higher cost end of life palliative care, such as blood transfusions, chemotherapy, radiation, or dialysis?
- Are there any enrollment policies for hospices that may be perceived as restrictive to those beneficiaries that may require higher intensity levels of hospice care?
- What continued education efforts do hospices take to understand the distinction between curative treatment and complex palliative treatment for services such as chemotherapy, radiation, dialysis, and blood transfusions as it relates to beneficiary eligibility under the hospice benefit? How is that information shared with patients at the time of election and throughout hospice service?
- Although the previously referenced analysis did not identify the cause for lower utilization of complex palliative treatments and/or higher intensity levels of hospice care, do the costs incurred with providing these services correlate to financial risks associated with enrolling such hospice patients?
- What are the overall barriers to providing higher intensity levels of hospice care and/or complex palliative treatments for eligible Medicare beneficiaries (for example, are there issues related to established formal partnerships with general inpatient/inpatient respite care facilities)? What steps, if any, can hospice providers or CMS take to address these barriers?

- What are reasons why non-hospice spending is growing for beneficiaries who elect hospice? What are ways to ensure that hospice is appropriately covering services under the benefit?

- What additional information should CMS or the hospice be required to provide the family/patient about what is and is not covered under the hospice benefit and how should that information be communicated?

- Are patients requesting the Patient Notification of Hospice Non-Covered Items, Services, and Drugs? Should this information be provided to all prospective patients at the time of hospice election or as part of the care plan?

- Should information about hospice staffing levels, frequency of hospice staff encounters, or utilization of higher LOC be provided to help patients and their caregivers make informed decisions about hospice selection? Through what mechanisms?

- The analysis included in this proposed rule shows increased overall non-hospice spending for Part D drugs for beneficiaries under a hospice election. What are tools to ensure that hospice is appropriately covering prescription drugs related to terminal illnesses and related conditions, besides prior authorization and the hospice election statement addendum?

- Given some of the differences between for-profit and not-for-profit utilization and spending patterns highlighted in this proposed rule, how can CMS improve transparency around ownership trends? For example, what and how should CMS publicly provide information around hospice ownership? Would this information be helpful for beneficiaries seeking to select a hospice for end of life care?

CMS is committed to improving the Medicare hospice benefit based, in part, on information collected by hospices not currently available on claims, assessments, or other publicly available data sources to support development of improved quality for end of life hospice care. We will continue to review our policies to support ownership transparency, patient education and transparency of hospice benefits, and to analyze the type of care that patients are receiving while in hospice to help to inform future rulemaking. We believe the information gathered under this RFI would help to improve the continuum of care under the hospice benefit by: (1) heightened patient and family satisfaction; (2) improvement in quality indicators; (3) lower rates of hospitalization (to include decreased intensive care unit admission and invasive procedures at the end of life); and (4) significantly lower health care expenditures at the end of life.

b. Request for Information on Health Equity Under the Hospice Benefit

CMS defines health equity as “the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and

health outcomes.”²¹ CMS is working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are vulnerable or underserved, and providing the care and support that our beneficiaries need to thrive. CMS’ goals are in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”²²

Health inequities persist overall in hospice and palliative care, where Black and Hispanic populations are less likely to utilize care and over 80 percent of patients are White.^{23 24 25 26} After hospice admission, some studies have shown that minorities experience disparities in the quality of care, with some evidence of higher rates of hospice disenrollment and concerns about care coordination amongst hospices with a higher proportion of Black enrollees; however, data on minority hospice enrollees is limited.²⁷ An important first step in addressing these disparities is improving data collection to allow for better measurement and reporting on equity across our programs and policies.^{28 29} We are interested in receiving input regarding the potential collection of additional indices and data elements that can provide insight regarding underlying health status and non-medical factors, access to care, and experience in medical care. Indices for measurements related to health-related social needs, social determinants of health, and social risk factors, have been

²¹ CMS Framework for Health Equity 2022–2032. <https://www.cms.gov/files/document/cms-framework-health-equity.pdf>.

²² <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

²³ Addressing Disparities in Hospice & Palliative Care. Nalley, Catlin. *Oncology Times*: March 20, 2021-Volume 43-Issue 6-p 1,10doi: 10.1097/01.COT.0000741732.73529.bb.

²⁴ <https://journalofethics.ama-assn.org/article/racial-disparities-hospice-moving-analysis-intervention/2006-09>.

²⁵ Capital Caring, Seasons Execs: Improving Hospice Diversity Starts from the Inside Out. 11/17/21. Holly Vossell. Capital Caring, Seasons Execs: Improving Hospice Diversity Starts from the Inside Out—Hospice & Palliative Care Network of Maryland <https://hospicenews.com/2021/11/17/capital-caring-seasons-execs-improving-hospice-diversity-starts-from-the-inside-out/>.

²⁶ Disparities in Palliative and Hospice Care and Completion of Advance Care Planning and Directives Among Non-Hispanic Blacks: A Scoping Review of Recent Literature (*nih.gov*).

²⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3822363/>.

²⁸ <https://hospicenews.com/2021/05/27/hospice-providers-leverage-data-to-reach-the-underserved/>.

²⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3822363/>.

developed and are currently being studied to better understand the policy implications.³⁰

CMS defines health equity data as the combination of quantitative and qualitative elements that enable the examination of health differences between populations and their causes.³¹ The Office of Disease Prevention and Health Promotion and Healthy People defines social determinants of health (SDOH) as the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.³² Health-related social needs are defined as the individual-level manifestations of SDOH, such as housing instability and food insecurity.³³ Social risk factors are defined as adverse social conditions that are associated with poor health, and can be measures from the community or individual-level for characteristics such as socioeconomic position, cultural context, social relationships, and residential and community context.³⁴

We appreciate hospice agencies and industry associations sharing their support and commitment to addressing health disparities and offering meaningful comments for consideration. Given the value of this engagement with CMS, and the ongoing development of activities to improve health equity, we solicit public comment on the following questions:

- What efforts do hospices employ to measure impact on health equity?
- What factors do hospices observe that influence beneficiaries in electing and accessing hospice care?
- What geographical area indices, beyond urban/rural, can CMS use to assess disparities in hospice?
- What information can CMS collect and share to help hospices serve

vulnerable and underserved populations and address barriers to access?

- What sociodemographic and SDOH data should be collected and used to effectively evaluate health equity in hospice settings?
- What are feasible and best practice approaches for the capture and analysis of data related to health equity?
- What barriers do hospices face in collecting information on SDOH and race and ethnicity? What is needed to overcome those barriers?

B. Proposed Routine FY 2024 Hospice Wage Index and Rate Update

1. Proposed FY 2024 Hospice Wage Index

The hospice wage index is used to adjust payment rates for hospices under the Medicare program to reflect local differences in area wage levels, based on the location where services are furnished. The hospice wage index utilizes the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Our regulations at § 418.306(c) require each labor market to be established using the most current hospital wage data available, including any changes made by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions.

In general, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. However, OMB occasionally issues minor updates and revisions to statistical areas in the years between the decennial censuses. On March 6, 2020, OMB issued Bulletin No. 20–01, which provided updates to and superseded OMB Bulletin No. 18–04 that was issued on September 14, 2018. The attachments to OMB Bulletin No. 20–01 provided detailed information on the update to statistical areas since September 14, 2018, and were based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2017 and July 1, 2018. (For a copy of this bulletin, we refer readers to the following website: <https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf>.) In OMB Bulletin No. 20–01, OMB announced one new Micropolitan Statistical Area, one new component of an existing Combined Statistical Area (CSA), and changes to New England City and Town Area (NECTA) delineations. In the FY 2021 Hospice Wage Index final rule (85 FR 47070), we stated that if appropriate, we would

propose any updates from OMB Bulletin No. 20–01 in future rulemaking. After reviewing OMB Bulletin No. 20–01, we determined that the changes in Bulletin 20–01 encompassed delineation changes that would not affect the Medicare wage index for FY 2022. Specifically, the updates consisted of changes to NECTA delineations and the redesignation of a single rural county into a newly created Micropolitan Statistical Area. The Medicare wage index does not utilize NECTA definitions, and, as most recently discussed in the FY 2021 Hospice Wage Index final rule (85 FR 47070), we include hospitals located in Micropolitan Statistical areas in each state's rural wage index.

In the FY 2020 Hospice Wage Index final rule (84 FR 38484), we finalized the proposal to use the current FY's hospital wage index data to calculate the hospice wage index values. In the FY 2021 Hospice Wage Index final rule (85 FR 47070), we adopted the revised OMB delineations with a 5-percent cap on wage index decreases, where the estimated reduction in a geographic area's wage index would be capped at 5 percent in FY 2021 and no cap would be applied to wage index decreases for the second year (FY 2022). In the FY 2023 Hospice Wage Index final rule (87 FR 45673), we finalized for FY 2023 and subsequent years the application of a permanent 5-percent cap on any decrease to a geographic area's wage index from its wage index in the prior year, regardless of the circumstances causing the decline, so that a geographic area's wage index would not be less than 95 percent of its wage index calculated in the prior FY.

For FY 2024, the proposed hospice wage index would be based on the FY 2024 hospital pre-floor, pre-reclassified wage index for hospital cost reporting periods beginning on or after October 1, 2019 and before October 1, 2020 (FY 2020 cost report data). The proposed FY 2024 hospice wage index would not take into account any geographic reclassification of hospitals, including those in accordance with section 1886(d)(8)(B) or 1886(d)(10) of the Act. The proposed FY 2024 hospice wage index would include a 5-percent cap on wage index decreases. The appropriate wage index value would be applied to the labor portion of the hospice payment rate based on the geographic area in which the beneficiary resides when receiving RHC or CHC. The appropriate wage index value is applied to the labor portion of the payment rate based on the geographic location of the facility for beneficiaries receiving GIP or IRC.

³⁰ <https://aspe.hhs.gov/sites/default/files/documents/474a62378abf941f20b3eaa74ca5721c/Area-level-Indices-ASPE-Reflections.pdf>.

³¹ <https://www.cms.gov/files/document/path-forwardhe-data-paper.pdf>.

³² Healthy People 2030, U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion. Retrieved from <https://health.gov/healthypeople/objectives-and-data/social-determinants-health>.

³³ Centers for Medicare & Medicaid Services. (2021). A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights. June 2021. Available at: <https://innovation.cms.gov/media/document/ahcm-screeningtool-companion>. Accessed: November 23, 2021.

³⁴ Alderwick H, Gottlieb LM. 2019. Meanings and misunderstandings: a social determinants of health lexicon for health care systems. *The Milbank Quarterly*, 97(2), p.407. <https://doi.org/10.1111%2F1468-0009.12390>.

In the FY 2006 Hospice Wage Index final rule (70 FR 45135), we adopted the policy that, for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the state would be used to calculate a statewide urban average pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. For FY 2023, the only CBSA without a hospital from which hospital wage data can be derived is 25980, Hinesville-Fort Stewart, Georgia. This remains the same for FY 2024 and the wage index value for Hinesville-Fort Stewart, Georgia is 0.8711.

To address rural areas where there were no hospitals, and thus no hospital wage data on which to base the calculation of the hospice wage index, in the FY 2008 Hospice Wage Index final rule (72 FR 50217 through 50218), we implemented a methodology to update the hospice wage index for rural areas without hospital wage data. In cases where there was a rural area without rural hospital wage data, we use the average pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs, to represent a reasonable proxy for the rural area. The term “contiguous” means sharing a border (72 FR 50217). Currently, the only rural area without a hospital from which hospital wage data could be derived is Puerto Rico. However, for rural Puerto Rico, we would not apply this methodology due to the distinct economic circumstances that exist there (for example, due to the close proximity of almost all of Puerto Rico’s various urban areas to non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas); instead, we would continue to use the most recent wage index previously available for that area. For FY 2024, we propose to continue using the most recent pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047, subsequently adjusted by the hospice floor.

As described in the August 8, 1997 Hospice Wage Index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are subject to application of the hospice floor to compute the hospice wage index used to determine payments to hospices. As previously discussed, the pre-floor, pre-reclassified hospital wage index values below 0.8 would be further adjusted by a 15 percent increase subject to a maximum wage index value

of 0.8. For example, if County A has a pre-floor, pre-reclassified hospital wage index value of 0.3994, we would multiply 0.3994 by 1.15, which equals 0.4593. Since 0.4593 is not greater than 0.8, then County A’s hospice wage index would be 0.4593. In another example, if County B has a pre-floor, pre-reclassified hospital wage index value of 0.7440, we would multiply 0.7440 by 1.15, which equals 0.8556. Because 0.8556 is greater than 0.8, County B’s hospice wage index would be 0.8.

The proposed hospice wage index applicable for FY 2024 (October 1, 2023 through September 30, 2024) is available on the CMS website at: <https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/Hospice-Wage-Index.html>.

2. Proposed FY 2024 Hospice Payment Update Percentage

Section 4441(a) of the BBA (Pub. L. 105–33) amended section 1814(i)(1)(C)(ii)(VI) of the Act to establish updates to hospice rates for FYs 1998 through 2002. Hospice rates were to be updated by a factor equal to the inpatient hospital market basket percentage increase set out under section 1886(b)(3)(B)(iii) of the Act, minus 1 percentage point. Payment rates for FYs since 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent FYs must be the inpatient market basket percentage increase for that FY. In the FY 2022 inpatient prospective payment system (IPPS) final rule we finalized the rebased and revised IPPS market basket to reflect a 2018 base year. We refer readers to the FY 2022 IPPS final rule (86 FR 45194 through 45208) for further information.

Section 3401(g) of the Affordable Care Act mandated that, starting with FY 2013 (and in subsequent FYs), the hospice payment update percentage would be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the “productivity adjustment”). The United States Department of Labor’s Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the United States economy. We note that previously the

productivity measure referenced in section 1886(b)(3)(B)(xi)(II) was published by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021 release of productivity data, BLS replaced the term “multifactor productivity” with “total factor productivity” (TFP). BLS noted that this is a change in terminology only and would not affect the data or methodology. As a result of the BLS name change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act is now published by BLS as “private nonfarm business total factor productivity.” However, as mentioned, the data and methods are unchanged. We refer readers to <https://www.bls.gov> for the BLS historical published TFP data. A complete description of IHS Global Inc.’s (IGI’s) TFP projection methodology is available on the CMS website at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareProgramRatesStats/MarketBasketResearch>. In addition, in the FY 2022 IPPS final rule (86 FR 45214), we noted that beginning with FY 2022, CMS changed the name of this adjustment to refer to it as the “productivity adjustment” rather than the “MFP adjustment”.

The proposed hospice payment update percentage for FY 2024 is based on the proposed inpatient hospital market basket update of 3.0 percent (based on IGI’s fourth quarter 2022 forecast with historical data through the third quarter 2022). Due to the requirements at sections 1886(b)(3)(B)(xi)(II) and 1814(i)(1)(C)(v) of the Act, the proposed inpatient hospital market basket update for FY 2024 of 3.0 percent must be reduced by a productivity adjustment as mandated by the Affordable Care Act (currently estimated to be 0.2 percentage point for FY 2024). In effect, the proposed hospice payment update percentage for FY 2024 would be 2.8 percent. We also propose that if more recent data become available after the publication of this proposed rule and before the publication of the final rule (for example, a more recent estimate of the inpatient hospital market basket update and/or productivity adjustment), we would use such data, if appropriate, to determine the hospice payment update percentage for FY 2024 in the final rule. We continue to believe it is appropriate to routinely update the hospice payment system so that it reflects the best available data encompassing differences in patient resource use and costs among

hospices as required by the statute. Therefore, we are proposing to: (1) update hospice payments using the methodology outlined and apply the 2018-based IPPS market basket update for FY 2024 of 3.0 percent, reduced by the statutorily required productivity adjustment of 0.2 percentage point along with the wage index budget neutrality adjustment to update the payment rates; and (2) use the FY 2024 hospice wage index which uses the FY 2024 pre-floor, pre-reclassified IPPS hospital wage index as its basis.

In the FY 2022 Hospice Wage Index final rule (86 FR 42532 through 42539), we rebased and revised the labor shares for RHC, CHC, GIP, and IRC using MCR data for freestanding hospices (CMS Form 1984–14, OMB Control Number 0938–0758) from 2018. The current labor portion of the payment rates are: for RHC, 66.0 percent; for CHC, 75.2 percent; for GIP, 63.5 percent; and for IRC, 61.0 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care. The non-labor portion of the payment rates are as follows: for RHC, 34.0 percent; for CHC, 24.8 percent; for GIP, 36.5 percent; and for IRC, 39.0 percent.

3. Proposed FY 2024 Hospice Payment Rates

There are four payment categories that are distinguished by the location and intensity of the hospice services provided. The base payments are adjusted for geographic differences in wages by multiplying the labor share, which varies by category, of each base rate by the applicable hospice wage

index. A hospice is paid the RHC rate for each day the beneficiary is enrolled in hospice, unless the hospice provides CHC, IRC, or GIP. CHC is provided during a period of patient crisis to maintain the patient at home; IRC is short-term care to allow the usual caregiver to rest and be relieved from caregiving; and GIP care is intended to treat symptoms that cannot be managed in another setting.

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47172), we implemented two different RHC payment rates, one RHC rate for the first 60 days and a second RHC rate for days 61 and beyond. In addition, in that final rule, we implemented an SIA payment for RHC when direct patient care is provided by an RN or social worker during the last 7 days of the beneficiary's life. The SIA payment is equal to the CHC hourly rate multiplied by the hours of nursing or social work provided (up to 4 hours total) that occurred on the day of service, if certain criteria are met. In order to maintain budget neutrality, as required under section 1814(i)(6)(D)(ii) of the Act, the new RHC rates were adjusted by a service intensity add-on budget neutrality factor (SBNF). The SBNF is used to reduce the overall RHC rate in order to ensure that SIA payments are budget-neutral. At the beginning of every FY, SIA utilization is compared to the prior year in order to calculate a budget neutrality adjustment.

In the FY 2017 Hospice Wage Index and Rate Update final rule (81 FR

52156), we initiated a policy of applying a wage index standardization factor to hospice payments in order to eliminate the aggregate effect of annual variations in hospital wage data. For FY 2024 hospice rate setting, we are continuing our longstanding policy of using the most recent data available. Specifically, we are using FY 2022 claims data with the FY 2024 payment rate updates. In order to calculate the wage index standardization factor, we simulate total payments using FY 2022 hospice utilization claims data with the FY 2023 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, and the 5 percent cap on wage index decreases) and FY 2023 payment rates and compare it to our simulation of total payments using FY 2022 utilization claims data, the FY 2024 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the 5 percent cap on wage index decreases) and FY 2023 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2023 wage index and payment rates for each level of care by the FY 2024 wage index and FY 2023 payment rates, we obtain a wage index standardization factor for each level of care. The wage index standardization factors for each level of care are shown in the Tables 8 and 9.

The proposed FY 2024 RHC rates are shown in Table 8. The proposed FY 2024 payment rates for CHC, IRC, and GIP are shown in Table 9.

TABLE 8—PROPOSED FY 2024 HOSPICE RHC PAYMENT RATES

Code	Description	FY 2023 payment rates	SIA budget neutrality factor	Wage index standardization factor	Proposed FY 2024 hospice payment update	Proposed FY 2024 payment rates
651	Routine Home Care (days 1–60)	\$211.34	1.0010	1.0012	1.028	\$217.74
651	Routine Home Care (days 61+)	167.00	1.0000	1.0011	1.028	171.86

TABLE 9—PROPOSED FY 2024 HOSPICE CHC, IRC, AND GIP PAYMENT RATES

Code	Description	FY 2023 payment rates	Wage index standardization factor	Proposed FY 2024 hospice payment update	Proposed FY 2024 payment rates
652	Continuous Home Care Full Rate = 24 hours of care.	\$1,522.04 (\$63.42 per hour)	0.9980	1.028	\$1,561.53 (\$65.06 per hour).
655	Inpatient Respite Care	\$492.10	1.0010	1.028	\$506.38.
656	General Inpatient Care	\$1,110.76	1.0003	1.028	\$1,142.20.

Sections 1814(i)(5)(A) through (C) of the Act require that hospices submit quality data, based on measures to be specified by the Secretary. In the FY

2012 Hospice Wage Index and Rate Update final rule (76 FR 47320 through 47324), we implemented a HQRPs as required by those sections. Hospices

were required to begin collecting quality data in October 2012 and submit those quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that

beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA, 2021 to change the payment reduction for failing to meet hospice quality reporting

requirements from 2 to 4 percentage points. This policy would apply beginning with the FY 2024 annual payment update (APU) that is based on calendar year (CY) 2022 quality data. Specifically, the Act requires that, for FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and beginning with the FY 2024 APU and for each subsequent year, the Secretary shall

reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality data submission requirements for that FY. The proposed FY 2024 rates for hospices that do not submit the required quality data would be updated by the proposed FY 2024 hospice payment update percentage of 2.8 percent minus 4 percentage points. These rates are shown in Tables 10 and 11.

TABLE 10—PROPOSED FY 2024 HOSPICE RHC PAYMENT RATES FOR HOSPICES THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2023 payment rates	SIA budget neutrality factor	Wage index standardization factor	FY 2024 hospice payment update of 2.8% minus 4 percentage points = -1.2%	Proposed FY 2024 payment rates
651	Routine Home Care (days 1–60)	\$211.34	1.0010	1.0012	0.988	\$209.26
651	Routine Home Care (days 61+)	167.00	1.0000	1.0011	0.988	165.18

TABLE 11—PROPOSED FY 2024 HOSPICE CHC, IRC, AND GIP PAYMENT RATES FOR HOSPICES THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

Code	Description	FY 2023 payment rates	Wage index standardization factor	FY 2024 hospice payment update of 2.8% minus 4 percentage points = -1.2%	Proposed FY 2024 payment rates
652	Continuous Home Care Full Rate = 24 hours of care.	\$1,522.04	0.9980	0.988	\$1,500.77 (\$62.53 per hour).
655	Inpatient Respite Care	492.10	1.0010	0.988	486.68.
656	General Inpatient Care	1,110.76	1.0003	0.988	1,097.76.

4. Proposed Hospice Cap Amount for FY 2024

As discussed in the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47183), we implemented changes mandated by the IMPACT Act of 2014. Specifically, we stated that for accounting years that end after September 30, 2016, and before October 1, 2025, the hospice cap is updated by the hospice payment update percentage rather than using the CPI-U. Division CC, section 404 of the CAA, 2021 extended the accounting years impacted by the adjustment made to the hospice cap calculation until 2030. In the FY 2022 Hospice Wage Index final rule (86 FR 42539), we finalized conforming regulations text changes at § 418.309 to reflect the provisions of the CAA, 2021. Division P, section 312 of the CAA, 2022 amended section 1814(i)(2)(B) of the Act and extended the provision that mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket update reduced by the productivity adjustment) rather

than the CPI-U for accounting years that end after September 30, 2016, and before October 1, 2031. Division FF, section 4162 of the CAA, 2023 amended section 1814(i)(2)(B) of the Act and extended the provision that currently mandates the hospice cap be updated by the hospice payment update percentage (hospital market basket update reduced by the productivity adjustment) rather than the CPI-U for accounting years that end after September 30, 2016, and before October 1, 2032. Before the enactment of this provision, the hospice cap update was set to revert to the original methodology of updating the annual cap amount by the CPI-U beginning on October 1, 2031. Therefore, for accounting years that end after September 30, 2016, and before October 1, 2032, the hospice cap amount is updated by the hospice payment update percentage rather than the CPI-U. As a result of the changes mandated by the CAA 2023, we are proposing conforming regulation text changes at § 418.309 to reflect the new

language added to section 1814(i)(2)(B) of the Act.

The proposed hospice cap amount for the FY 2024 cap year is \$33,396.55, which is equal to the FY 2023 cap amount (\$32,486.92) updated by the proposed FY 2024 hospice payment update percentage of 2.8 percent.

5. Conforming Regulations Text Revisions for Telehealth Services

We are proposing to revise the regulations text at § 418.22(a)(4)(ii) in accordance with Division FF, section 4113(f) of the CAA, 2023, effective January 1, 2024. Additionally, we are proposing to remove § 418.204(d), effective retroactively to May 12, 2023, to align with the anticipated end of the COVID-19 PHE. In the first COVID-19 interim final rule “Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency” (85 FR 19230, 19289) (April 6, 2020), we amended the hospice regulations at

§ 418.204 on an interim basis to specify that when a patient is receiving routine home care, hospices may provide services via a telecommunications system, if it is feasible and appropriate to ensure that Medicare patients can continue receiving services that are reasonable and necessary for the palliation and management of a patients' terminal illness and related conditions without jeopardizing the patients' health or the health of those who are providing such services during the COVID-19 PHE. We stated that this change was effective for the duration of the COVID-19 PHE. Specifically, we propose to:

- Revise § 418.22(a)(4)(ii), which outlines the certification of terminal illness requirements. We propose to add “or through December 31, 2024, whichever is later” after “During a Public Health Emergency, as defined in § 400.200 of this chapter.”
- Revise § 418.204, to remove paragraph (d) to eliminate the use of technology in furnishing services during a PHE.

C. Proposals and Updates to the Hospice Quality Reporting Program (HQRP)

1. Background and Statutory Authority

The Hospice Quality Reporting Program (HQRP) specifies reporting requirements for the Hospice Item Set (HIS), administrative data, and Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Hospice Survey. Section 1814(i)(5) of the Act requires the Secretary to establish and maintain a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA 2021 to change the payment reduction for failing to meet

hospice quality reporting requirements from 2 to 4 percentage points. Specifically, the Act requires that, beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and beginning with the FY 2024 APU and for each subsequent year, the Secretary shall reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality data submission requirements for that FY. This payment penalty increase to 4 percent is statutorily required; as discussed below, we are proposing to codify its application and set completeness thresholds at proposed § 418.312(j).

Depending on the amount of the annual update for a particular year, a reduction of 4 percentage points beginning in FY 2024 could result in the annual market basket update being less than zero percent for a FY and may result in payment rates that are less than payment rates for the preceding FY. Any reduction based on failure to comply with the reporting requirements, as required by section 1814(i)(5)(B) of the Act, would apply only for the specified year. Typically, about 18 percent of Medicare-certified hospices are found non-compliant with the HQRP reporting requirements and subject to the APU payment reduction for a given FY.

In the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), we finalized two new measures using claims data: (1) Hospice Visits in the Last Days of Life (HVLDDL); and (2) Hospice Care Index (HCI). We also finalized a policy that claims-based measures would use 8 quarters of data in order to publicly report on more hospices.

In addition, we removed the seven Hospice Item Set (HIS) Process Measures from the program as

individual measures and public reporting because the HIS Comprehensive Assessment Measure is sufficient for measuring care at admission without the seven individual process measures. For a detailed discussion of the historical use for measure selection and removal for the HQRP quality measures, we refer readers to the FY 2016 Hospice Wage Index and Rate Update final rule (80 FR 47142) and the FY 2019 Hospice Wage Index and Rate Update final rule (83 FR 38622). In the FY 2022 Hospice Wage Index and Rate Update final rule (86 FR 42553), we finalized § 418.312(b)(2), which requires hospices to provide administrative data, including claims-based measures, as part of the HQRP requirements for § 418.306(b). In that same final rule, we provided CAHPS Hospice Survey updates. We finalized temporary changes to our public reporting policies based on the March 27, 2020 memorandum³⁵ and provided another tip sheet, referred to as the “Third Edition HQRP Public Reporting Tip Sheet” on the HQRP Requirements and Best Practices web page.

As finalized in the FY 2022 Hospice Wage Index and Payment Rate Update final rule (86 FR 42552), public reporting of the two new claims-based quality measures (QMs), the Hospice Visits in Last Days of Life (HVLDDL) and the Hospice Care Index (HCI) is available on the Care Compare/Provider Data Catalogue (PDC) web pages as of the August 2022 refresh. In the FY 2023 Hospice proposed rule (87 FR 19442), we did not propose any new quality measures. However, we provide updates on already-adopted measures. Table 12 shows current quality measures finalized since the FY 2022 Hospice Wage Index and Payment Rate Update final rule.

TABLE 12—QUALITY MEASURES IN EFFECT FOR THE HOSPICE QUALITY REPORTING PROGRAM

Hospice Quality Reporting Program
Hospice Item set
Hospice and Palliative Care Composite Process Measure—HIS-Comprehensive Assessment Measure at Admission includes:
1. Patients Treated with an Opioid who are Given a Bowel Regimen.
2. Pain Screening.
3. Pain Assessment.
4. Dyspnea Treatment.
5. Dyspnea Screening.
6. Treatment Preferences.
7. Beliefs/Values Addressed (if desired by the patient).

³⁵ Exceptions and Extensions for Quality Reporting Requirements for Acute Care Hospitals, PPS-Exempt Cancer Hospitals, Inpatient Psychiatric Facilities, Skilled Nursing Facilities, Home Health

Agencies, Hospices, Inpatient Rehabilitation Facilities, Long-Term Care Hospitals, Ambulatory Surgical Centers, Renal Dialysis Facilities, and MIPS Eligible Clinicians Affected by COVID-19 are

available at: <https://www.cms.gov/files/document/guidance-memo-exceptions-and-extensions-quality-reporting-and-value-based-purchasing-programs.pdf>.

TABLE 12—QUALITY MEASURES IN EFFECT FOR THE HOSPICE QUALITY REPORTING PROGRAM—Continued

Administrative Data, including Claims-based Measures

Hospice Visits in Last Days of Life (HVLDL)

Hospice Care Index (HCI):

1. Continuous Home Care (CHC) or General Inpatient (GIP) Provided.
2. Gaps in Skilled Nursing Visits.
3. Early Live Discharges.
4. Late Live Discharges.
5. Burdensome Transitions (Type 1)—Live Discharges from Hospice Followed by Hospitalization and Subsequent Hospice Readmission.
6. Burdensome Transitions (Type 2)—Live Discharges from Hospice Followed by Hospitalization with the Patient Dying in the Hospital.
7. Per-beneficiary Medicare Spending.
8. Skilled Nursing Care Minutes per Routine Home Care (RHC) Day.
9. Skilled Nursing Minutes on Weekends.
10. Visits Near Death.

CAHPS Hospice Survey

CAHPS Hospice Survey:

1. Communication with Family.
2. Getting timely help.
3. Treating patient with respect.
4. Emotional and spiritual support.
5. Help for pain and symptoms.
6. Training family to care for the patient.
7. Rating of this hospice.
8. Willing to recommend this hospice.

2. Proposed Hospice Outcomes & Patient Evaluation (HOPE) Update

As finalized in the FY 2020 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements final rule (84 FR 38484), we are developing a hospice instrument named Hospice Outcomes & Patient Evaluation (HOPE). Our primary objectives for HOPE are to provide quality data for the HQRP requirements through standardized data collection; and provide additional clinical data that could inform future payment refinements. To the extent that the instrument utilizes data already being collected for the Hospice QRP, our statutory authority for the HOPE instrument derives from section 1814(i)(5)(C) of the Act. In addition, statutory language at section 1861(aa)(2)(G) of the Act permits the Secretary to impose “such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services.”

The HOPE tool would be a component of implementing high-quality and safe hospice care for patients, both in Medicare and non-Medicare. HOPE would also contribute to the patient’s plan of care through providing patient data ongoing throughout the hospice stay. By providing data from multiple time points across the hospice stay, HOPE would provide information to hospice providers to improve practice and care quality. HOPE is intended to provide quality data to calculate

outcomes and develop additional quality measures.

We stated in the FY 2022 Hospice Wage Index and Payment Update final rule (86 FR 42528) that while the standardized patient assessment data elements for certain post-acute care providers required under the IMPACT Act of 2014 are not applicable to hospices, it would be reasonable to include some of those standardized elements that appropriately and feasibly apply to hospice to the extent permitted by our statutory authority. Many patients move through other providers within the healthcare system to hospice. Therefore, considering tracking key demographic and social risk factor items that apply to hospice could support our goals for continuity of care, overall patient care and well-being, development of infrastructure for the interoperability of electronic health information, and health equity which is also discussed in this rule.

In the FY 2023 Hospice final rule (87 FR 45669), we outlined the testing phases HOPE has undergone, including cognitive, pilot, alpha testing, and national beta field testing.

National beta testing, completed at the end of October 2022, allowed us to obtain input from participating hospice teams about the assessment instrument and field testing to refine and support the final draft items and time points for HOPE. It also allowed us to estimate the time to complete the HOPE data items and establish the interrater reliability of each item.

We continue HOPE development in accordance with the Blueprint for the CMS Measures Management System. The development of HOPE is grounded in information gathering activities to identify and refine hospice domains and candidate items. We appreciate the industry’s and trade associations’ engagement in providing input through information sharing activities, including listening sessions, expert interviews, key stakeholder interviews, and focus groups to support HOPE development. As CMS proceeds with the refinement of HOPE, we will continue to engage with stakeholders through sub-regulatory channels. We intend to continue to host HQRP Forums to allow hospices and other interested parties to engage with us on the latest updates and ask questions on the development of HOPE and related quality measures as appropriate. We also have a dedicated email account, *HospiceAssessment@cms.hhs.gov*, for comments about HOPE. We will use field test results to create a final version of HOPE to propose in future rulemaking for national implementation. We will continue to inform all stakeholders throughout this process by using a variety of sub-regulatory channels and regular HQRP communication strategies, such as Open Door Forums (ODF), Medicare Learning Network (MLN), *CMS.gov* website announcements, listserv messaging, and other ad hoc publicly announced opportunities. We appreciate the support for HOPE and reiterate our commitment to providing updates and engaging stakeholders through sub-

regulatory means. HOPE updates can be found at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/HOPE> and engagement opportunities, including those regarding HOPE are at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-QRP-Provider-Engagement-Opportunities>.

We plan to provide additional information regarding HOPE testing results on the HQRP website in late Spring of 2023.

3. Proposed Update on Future Quality Measure (QM) Development

In the FY 2020 Hospice Wage Index and Payment Rate Update final rule (84 FR 38484), we provided updates related to CMS's process for identifying high priority areas of quality measurement and improvement and for developing quality measures that address those priorities. Information on the current HQRP quality measures can be found at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Current-Measures>.

In this proposed rule, we provide updates on the status of current HQRP measures and the development of hospice quality measure concepts based on the future use of HOPE, administrative, and health equity data. On July 26, 2022, the CBE endorsed the claims-based Hospice Visits in the Last Days of Life measure (HVLDL). More information can be found on the HQRP Quality Measure Development web page: <https://www.cms.gov/medicare/hospice-quality-reporting-program/quality-measure-development>. CMS intends to develop several quality measures based on information collected by HOPE when it is implemented. Currently, CMS intends to develop at least two HOPE-based process and outcome quality measures: (1) Timely Reassessment of Pain Impact; and (2) Timely Reassessment of Non-Pain Symptom Impact. Additional information about CMS's HOPE-based measure development efforts is available in the 2021 technical expert panel (TEP) Summary Reports and the 2021 Information Gathering Report, available at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-QRP-Provider-Engagement-Opportunities>.

4. Proposed Health Equity Updates Related to HQRP

a. Background

In the FY 2023 Hospice Payment Rate Update proposed rule (87 FR 19442), we included a Request for Information (RFI) on hospices' current health equity activities and a future approach to advancing health equity in hospice. We define health equity as the attainment of the highest level of health for all people, where everyone has a fair and just opportunity to attain their optimal health regardless of race, ethnicity, disability, sexual orientation, gender identity, socioeconomic status, geography, preferred language, or other factors that affect access to care and health outcomes. We are working to advance health equity by designing, implementing, and operationalizing policies and programs that support health for all the people served by our programs, eliminating avoidable differences in health outcomes experienced by people who are disadvantaged or underserved, and providing the care and support that our enrollees need to thrive. CMS' goals outlined in the *CMS Framework for Health Equity 2022–2023* are in line with Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”³⁶ The goals included in the *CMS Framework for Health Equity* serve to further advance health equity, expand coverage, and improve health outcomes for the more than 170 million individuals supported by our programs, and sets a foundation and priorities for our work, including: strengthening our infrastructure for assessment, creating synergies across the health care system to drive structural change, and identifying and working to eliminate barriers to CMS-supported benefits, services, and coverage.

In addition to the *CMS Framework for Health Equity*, CMS seeks to “advance health equity” as one of eight goals comprising the CMS National Quality Strategy (NQS).³⁷ The NQS identifies a wide range of potential quality levers that can support our advancement of equity, including: establishing a standardized approach for patient-reported data and stratification; employing quality and value-based programs to publicly report and

incentivize closing equity gaps; and developing equity-focused performance metrics, regulations, oversight strategies, and quality improvement initiatives.

A goal of this NQS is to address persistent disparities that underly our healthcare system. Racial disparities, in particular, are estimated to cost the U.S. \$93B in excess medical costs and \$42B in lost productivity per year, in addition to economic losses due to premature deaths.³⁸ At the same time, racial and ethnic diversity has increased in recent years with an increase in the percentage of people who identify as two or more races accounting for most of the change, rising from 2.9 percent to 10.2 percent between 2010 and 2020.³⁹ Therefore, we need to consider ways to reduce disparities, achieve equity, and support our diverse population through the way we measure quality and display of data.

We solicited public comments via the aforementioned RFI on a potential health equity structural composite measure in the Hospice Quality Reporting Program. CMS defines a health equity quality measure as a measure (or group of measures) that has the capability to identify, quantify, characterize, and/or link drivers of health and related needs to disparities in health access, processes, outcomes, or patient experiences; the measure(s) can be used to inform the design, implementation, and evaluation of interventions to advance equitable opportunity for optimal health and well-being for all individuals and populations. We refer readers to the FY 2023 Hospice Payment Rate Update final rule (87 FR 45669) for a summary of the public comments and suggestions received in response to the health equity RFI.

We took these comments into account, and we continue to work to develop policies, quality measures, and measurement strategies on this important topic. After considering public comments, CMS decided to convene a health equity technical expert panel to provide additional input to inform the development of health equity quality measures. The work of this technical expert panel is described in detail below.

³⁸ Ani Turner, The Business Case for Racial Equity, A Strategy for Growth, W.K. Kellogg Foundation and Altarum, April 2018.

³⁹ 2022 National Healthcare Quality and Disparities Report. Content last reviewed November 2022. Agency for Healthcare Research and Quality, Rockville, MD. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

³⁶ <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf>.

³⁷ Centers for Medicare & Medicaid Services. What is the CMS Quality Strategy? Available at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Value-Based-Programs/CMS-Quality-Strategy>.

Home Health and Hospice Health Equity Technical Expert Panel

To support new health equity measure development, the Home Health and Hospice Health Equity Technical Expert Panel (Home Health & Hospice HE TEP) was convened by a CMS contractor in Fall 2022. The Home Health & Hospice HE TEP was comprised of health equity experts from hospice and home health settings, specializing in quality assurance, patient advocacy, clinical work, and measure development. The TEP was charged with providing input on a potential cross-setting health equity structural composite measure concept as set forth in the FY 2023 Hospice Payment Rate Update proposed rule (87 FR 19442) as part of an RFI related to the HQRP Health Equity Initiative. Specifically, the TEP assessed the face validity and feasibility of the potential structural measure. The TEP also provided input on possible confidential feedback report options to be used for monitoring health equity. TEP members also had the opportunity to provide ideas for additional health equity measure concepts or approaches to addressing health equity in hospice and home health settings. A summary of the Home Health & Hospice HE TEP meetings and final TEP recommendations would be available in 2023.

Universal Foundation

To further the goals of the CMS National Quality Strategy (NQS), CMS leaders from across the Agency have come together to move towards a building-block approach to streamline quality measures across CMS quality programs for the adult and pediatric populations. This “Universal Foundation” of quality measure will focus provider attention, reduce burden, identify disparities in care, prioritize development of interoperable, digital quality measures, allow for cross-comparisons across programs, and help identify measurement gaps. The development and implementation of the Preliminary Adult and Pediatric Universal Foundation Measures will promote the best, safest, and most equitable care for individuals as we all come together on these critical quality areas. As CMS moves forward with the Universal Foundation, we will be working to identify foundational measures in other specific settings and populations to support further measure alignment across CMS programs as applicable.

To learn more regarding the impact and next steps of the Universal

Foundation, read the recent publication of “Aligning Quality Measures Across CMS—the Universal Foundation” in the New England Journal of Medicine at <https://www.nejm.org/doi/pdf/10.1056/NEJMp2215539>.

b. Anticipated Future State

Possible Future Health Equity Efforts

We are committed to developing approaches to meaningfully incorporate the advancement of health equity into the HQRP. One consideration is including social determinants of health into our quality measures and data stratification. Social determinants of health—social, economic, environmental, and community conditions—may have a stronger influence on the population’s health and well-being than services delivered by practitioners and healthcare delivery organizations.⁴⁰ Given these impacts, measure stratification is important. Measure stratification helps identify disparities by calculating quality measure outcomes separately for different beneficiary populations. By looking at measure results for different populations separately, CMS and providers can see how care outcomes may differ between certain patient populations in a way that would not be apparent from an overall score (*i.e.*, a score averaged over all beneficiaries). This helps CMS to better fulfill our health equity goals. For example, when certain quality measures from the past two decades related to healthcare outcomes for children are stratified by race, ethnicity, and income, they show that important health disparities have been narrowed, because outcomes for children in the lowest income households and for Black and Hispanic children improved faster than outcomes for children in the highest income households or for White children.⁴¹ This differential impact would not be apparent without stratification. This work supports our desire to understand with providers what can be learned from stratifying our quality measures by race, ethnicity, and income.

As part of our efforts to advance health equity in hospice, we are taking into consideration the health equity measures used in other health care provider settings. There are social

determinants of health (SDOH) data items in the standardized patient assessment instruments used in the post-acute care (PAC) settings, and data items related to social drivers of health in acute care settings such as the hospital inpatient quality reporting program. We see value in aligning SDOH data items across all care settings and might consider adding SDOH data items used by other care settings into HQRP as we develop future health equity quality measures under our HQRP statutory authority.⁴² This would further the NQS to align quality measures across our programs as part of the Universal Foundation.⁴³

As we move this important work forward, we will continue to take input from hospice stakeholders into account and monitor the application of proposed health equity policies across CMS and other HHS initiatives. As of this publication, the Initial Proposals for Updating OMB’s Race and Ethnicity Statistical Standards, 88 FR 5375, seeks public comment. Also, the Office of the National Coordinator for Health IT (ONC) welcomes input on data classes and data elements for future versions of the United States Core Data for Interoperability (USCDI)—a standardized set of health data classes and constituent data elements for nationwide, interoperable health information exchange.⁴⁴ In addition, while the anticipated health equity efforts that impact policy changes would proceed through the notice and comment rulemaking process, other activities would be completed through sub-regulatory channels and regular communication strategies, such as Open-Door Forums, Medicare Learning Network, CMS.gov website announcements, listserv messaging, and other opportunities.

5. Proposed CAHPS Hospice Survey Updates

CAHPS Hospice Survey Mode Experiment

In the FY 2023 Hospice Payment Rate Update final rule (87 FR 45669), we provided information on a mode experiment CMS conducted in 2021. The purpose of the experiment was to test:

- A web-mail mode (email invitation to a web survey, with mail follow-up to non-responders).

⁴² <https://www.nejm.org/doi/full/10.1056/NEJMp2215539>, February 1, 2023.

⁴³ <https://www.nejm.org/doi/full/10.1056/NEJMp2215539>, February 1, 2023.

⁴⁴ <https://www.healthit.gov/sites/isa/files/2023-01/Draft-USCDI-Version-4-January-2023-Final.pdf>.

⁴⁰ 2022 National Healthcare Quality and Disparities Report. Content last reviewed November 2022. Agency for Healthcare Research and Quality, Rockville, MD. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

⁴¹ 2022 National Healthcare Quality and Disparities Report. Content last reviewed November 2022. Agency for Healthcare Research and Quality, Rockville, MD. <https://www.ahrq.gov/research/findings/nhqrdr/nhqrdr22/index.html>.

- A revised survey version, which is shorter and simpler than the current survey, and includes new questions on topics suggested by stakeholders.

- Modifications to survey administration protocols designed to improve overall response rates, such as a prenotification letter and extended field period.

Fifty-six large hospices participated in the mode experiment, representing a range of geographic regions, ownership, and past performance on the CAHPS Hospice Survey. A total of 15,515 decedents/caregivers were randomly sampled from these hospices. Sampled decedents/caregivers were randomly assigned to one of four modes of administration (mail only, telephone only, mail-telephone, web-mail); mail only cases were randomly assigned to be administered either the revised or the current survey.

The information received on the CAHPS Hospice Survey Mode Experiment CMS conducted in 2021, resulted in the following findings:

- Response rates to the revised survey were 35.1 percent in mail only mode, 31.5 percent in telephone only mode, 45.3 percent in mail-telephone, and 39.7 percent in web-mail mode;

- Response rates to web-mail mode were similar to mail only mode for those without email addresses (35.2 percent vs. 34.4 percent), but 13 percentage points higher for those with email addresses (49.6 percent vs. 36.7 percent);

- Response rates to mail-only administration of the revised and current survey were similar (35.1 percent vs. 34.2 percent);

- Mailing of a prenotification letter resulted in an increased response rate of 2.4 percentage points;

- Extending the field period to 49 days (from the current 42 days) resulted in an increased response rate of 2.5 percentage points in the mail only mode.

In addition, the following changes were tested as part of the revised CAHPS Hospice Survey:

- Removal of one survey item regarding confusing or contradictory information from the Hospice Team Communication measure;
- Replacement of the multi-item Getting Hospice Care Training measure with a new, one-item summary measure;
- Addition of a new, two-item Care Preferences measure;
- Simplified wording to component items in the Hospice Team Communication, Getting Timely Care, and Treating Family Member with Respect measures

CMS will use mode experiment results to inform decisions about potential changes to administration protocols and survey instrument content. Potential measure changes will be submitted to the Measures Under Consideration (MUC) process in 2023 and may be proposed in future rulemaking. We are not proposing any changes in this rule.

6. Form, Manner, and Timing of Quality Data Submission

a. Statutory Penalty for Failure To Report

Section 1814(i)(5)(C) of the Act requires that each hospice submit data to the Secretary on quality measures specified by the Secretary. The data must be submitted in a form and manner, and at a time specified by the Secretary. Section 1814(i)(5)(A)(i) of the Act was amended by the CAA 2021 and the payment reduction for failing to meet hospice quality reporting requirements is increased from 2 percent to 4 percent beginning with FY 2024. The Act requires that, beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and then beginning in FY 2024 and for each subsequent year, the Secretary shall reduce the market basket update by 4

percentage points for any hospice that does not comply with the quality data submission requirements for that FY. In the FY 2023 Hospice Wage Index and Payment Rate Update proposed rule (87 FR 19442), we revised our regulations at § 418.306(b)(2) in accordance with this statutory change (86 FR 42605). We are not proposing any new public reporting proposals in this rule.

b. Compliance

HQRP Compliance requires understanding three timeframes for both HIS and CAHPS: (1) The relevant Reporting Year, payment FY, and the Reference Year (The “Reporting Year” (HIS)/“Data Collection Year” (CAHPS). This timeframe is based on the calendar year (CY). It is the same CY for both HIS and CAHPS. If the CAHPS Data Collection year is CY 2023, then the HIS reporting year is also CY 2023.); (2) The APU is subsequently applied to FY payments based on compliance in the corresponding Reporting Year/Data Collection Year; and (3) For the CAHPS Hospice Survey, the Reference Year is the CY before the Data Collection Year. The Reference Year applies to hospices submitting a size exemption from the CAHPS survey (there is no similar exemption for HIS). For example, for the CY 2023 data collection year, the Reference Year, is CY 2022. This means providers seeking a size exemption for CAHPS in CY 2023 will base it on their hospice size in CY 2022. Submission requirements are codified in § 418.312.

For every CY, all Medicare-certified hospices are required to submit HIS and CAHPS data according to the requirements in § 418.312. Table 13 summarizes the three timeframes. It illustrates how the CY interacts with the FY payments, covering the CY 2022 through CY 2025 data collection periods and the corresponding APU application from FY 2024 through FY 2027.

TABLE 13—HQRP REPORTING REQUIREMENTS AND CORRESPONDING ANNUAL PAYMENT UPDATES

Reporting year for HIS and data (collection year for CAHPS data)	Annual payment update impacts (payments for the FY)	Reference year for CAHPS size (exemption (CAHPS only))
CY 2022	FY 2024 APU	CY 2021.
CY 2023	FY 2025 APU	CY 2022.
CY 2024	FY 2026 APU	CY 2023.
CY 2025	FY 2027 APU	CY 2024.

As illustrated in Table 13, CY 2022 data submissions compliance impacts the FY 2024 APU. CY 2023 data submissions compliance impacts the FY 2025 APU. CY 2024 data submissions compliance impacts FY 2026 APU. This

CY data submission impacting FY APU pattern follows for subsequent years.

c. Submission of Data Requirements

As finalized in the FY 2016 Hospice Wage Index and Payment Rate Update

final rule (80 FR 47142, 47192), hospices' compliance with HIS requirements beginning with the FY 2020 APU determination (that is, based on HIS-Admission and Discharge records submitted in CY 2018) are based

on a timeliness threshold of 90 percent. This means CMS requires that hospices submit 90 percent of all required HIS records within 30 days of the event (that is, patient's admission or discharge). The 90-percent threshold is hereafter referred to as the timeliness compliance threshold. Ninety percent of all required HIS records must be submitted and accepted within the 30-day submission deadline to avoid the statutorily-mandated payment penalty. Hospice compliance with claims data

requirements is based on administrative data collection. Since Medicare claims data are already collected from claims, hospices are considered 100 percent compliant with the submission of these data for the HQRP. There is no additional submission requirement for administrative data.

To comply with CMS' quality reporting requirements for CAHPS, hospices are required to collect data monthly using the CAHPS Hospice Survey. Hospices comply by utilizing a

CMS-approved third-party vendor. Approved Hospice CAHPS vendors must successfully submit data on the hospice's behalf to the CAHPS Hospice Survey Data Center. A list of the approved vendors can be found on the CAHPS Hospice Survey website: www.hospicecahpsurvey.org. Table 14, HQRP Compliance Checklist, illustrates the APU and timeliness threshold requirements.

TABLE 14—HQRP COMPLIANCE CHECKLIST

Annual payment update	HIS	CAHPS
FY 2024	Submit at least 90 percent of all HIS records or its successor instrument within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/22–12/31/22.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2022–12/31/2022.
FY 2025	Submit at least 90 percent of all HIS records or its successor instrument within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/23–12/31/23.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2023–12/31/2023.
FY 2026	Submit at least 90 percent of all HIS records or its successor instrument within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/24–12/31/24.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2024–12/31/2024.
FY 2027	Submit at least 90 percent of all HIS records or its successor instrument within 30 days of the event date (patient's admission or discharge) for patient admissions/discharges occurring 1/1/25–12/31/25.	Ongoing monthly participation in the Hospice CAHPS survey 1/1/2025–12/31/2025.

Note: The data source for the claims-based measures will be Medicare claims data that are already collected and submitted to CMS. There is no additional submission requirement for administrative data (Medicare claims), and hospices with claims data are 100-percent compliant with this requirement.

Most hospices that fail to meet HQRP requirements do so because they miss the 90 percent threshold. We offer many training and education opportunities through our website, which are available 24/7, 365 days per year, to enable hospice staff to learn at the pace and time of their choice. We want hospices to be successful with meeting the HQRP requirements. We encourage hospices to use the website at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting/Hospice-Quality-Reporting-Training-Training-and-Education-Library>. For more information about HQRP Requirements, we refer readers to visit the frequently-updated HQRP website and especially the Best Practice, Education and Training Library, and Help Desk web pages at: <https://www.cms.gov/Medicare/Quality-Initiatives-Patient-Assessment-Instruments/Hospice-Quality-Reporting>. We also encourage readers to visit the HQRP web page and sign-up for the Hospice Quality ListServ to stay informed about HQRP.

d. Proposal To Codify HQRP Data Completion Thresholds

As previously noted, we are proposing to add paragraph (j) to § 418.312 for data completion thresholds. In the FY 2016 Hospice Wage Index final rule (80 FR 47192 through 47193), we finalized HQRP thresholds for completeness of HQRP data submissions. To ensure that hospices are meeting an acceptable standard for completeness of submitted data, we finalized the policy that, beginning with the FY 2018 HQRP, hospices must meet or exceed one data submission threshold. Hospices must meet or exceed a data submission threshold set at 90 percent of all required HIS or successor instrument records within 30 days of the event (that is, patient's admission or discharge).

Under our finalized policy, some assessment data did not obtain a response and, in those circumstances, are not “missing” nor is the data incomplete. For example, in the case of a patient who does not have any of the medical conditions in a “check all that apply” listing, the absence of a response

of a health condition indicates that the condition is not present, and it would be incorrect to consider the absence of such data as missing in a threshold determination.

In the FY 2017 Hospice Wage Index proposed rule (81 FR 25498), we received comments on our previously finalized policies for form, manner, and timing of data collection. These public comments were considered and summarized in the FY 2017 Hospice Wage Index final rule (81 FR 52143). In the FY 2022 Hospice Wage Index and Payment Rate Update final rule and the FY 2023 Hospice Wage Index and Payment Rate Update final rule (87 FR 45669), we provided an HQRP Compliance Checklist, which illustrated additional details about how the compliance thresholds applied to APUs by FY.

We propose to codify these data completeness thresholds at § 418.312(j)(1) for measures data collected using the HIS or a successor instrument. Under this section, we propose to codify our requirement that hospices must meet or exceed a data submission threshold set at 90 percent

of all required HIS or successor instrument records within 30 days of the event (that is, patient's admission or discharge) and submit the data through the CMS designated data submission systems. This threshold would apply to all HIS or successor instrument-based measures and data elements adopted into HQRP. We also propose to codify § 418.312(j)(2) that a hospice must meet or exceed this threshold to avoid receiving a 4-percentage point reduction to its annual payment update for a given FY as codified at § 418.306(b)(2).

We invite public comment on our proposal to codify in regulations text the HQRP data completion thresholds at § 418.312(j) for measures and standardized patient assessment elements collected using the HIS or successor instrument and compliance threshold to avoid receiving 4 percentage point reduction as described under § 412.306(b)(2).

e. Establishing Hospice Program Survey and Enforcement Procedures Under the Medicare Program; Provisions Update (CAA 2021, Section 407)

Division CC, section 407 of the CAA 2021, amended Part A of Title XVIII of the Act to add a new section 1822, and amended sections 1864(a) and 1865(b) of the Act, establishing new hospice program survey and enforcement requirements, required public reporting of survey information, and a new hospice hotline.

This law (CAA 2021) requires public reporting of hospice program surveys conducted by both State Agencies (SAs) and Accrediting Organizations (AOs), as well as enforcement actions taken as a result of these surveys on the CMS website in a manner that is prominent, easily accessible, searchable, and presented in a readily understandable format. It removes the prohibition at section 1865(b) of the Act of public disclosure of hospice surveys performed by AOs, and requires that AOs use the same survey deficiency reports as SAs (Form CMS-2567, "Statement of Deficiencies," or a successor form) to report survey findings.

The CAA 2021 also requires hospice programs to measure and reduce inconsistency in the application of survey results among all hospice program surveyors, and requires the Secretary to provide comprehensive training and testing of SA and AO hospice program surveyors, including training with respect to review of written plans of care. The CAA 2021 prohibits SA surveyors from surveying hospice programs for which they have worked in the last 2 years or have a financial interest, requires hospice

program SAs and AOs to use a multidisciplinary team of individuals for surveys conducted with more than one surveyor to include at least one RN and provides that each SA must establish a dedicated toll-free hotline to collect, maintain, and update information on hospice programs and to receive complaints.

The provisions in the CAA 2021 also direct the Secretary to create a Special Focus Program (SFP) for poor-performing hospice programs, sets out authority for imposing enforcement remedies for noncompliant hospice programs, and requires the development and implementation of a range of remedies as well as procedures for appealing determinations regarding these remedies. These remedies can be imposed instead of, or in addition to, termination of a hospice programs' participation in the Medicare program. The remedies include civil money penalties (CMPs), suspension of all or part of payments, and appointment of temporary management to oversee operations.

In the CY 2022 Home Health Prospective Payment System (HH PPS) final rule (86 FR 62240), we addressed provisions related to the hospice survey enforcement and other activities described in this section. A summary of the finalized CAA provisions can be found in the CY 2022 HH PPS final rule: <https://www.govinfo.gov/content/pkg/FR-2021-11-09/pdf/2021-23993.pdf>. We finalized all the CAA provisions in CY 2022 rulemaking except for the special focus program (SFP). As outlined in the CY 2022 HH PPS final rule, we stated that we would take into account comments that we received and work on a revised proposal, seeking additional collaboration with stakeholders to further develop the methodology for the SFP since the publication of the CY 2022 HH PPS final rule.

In the FY 2023 Hospice Wage Index and Payment Rate Update and Hospice Quality Reporting Requirements (87 FR 45669) final rule, we affirmed our intention to initiate a hospice special focus program Technical Expert Panel (TEP) to provide input on the structure and methodology of the SFP. Public comments received in response to the FY 2023 Hospice Wage Index and Payment Rate Update proposed rule were generally supportive of CMS's efforts to establish an SFP and to convene a TEP to provide feedback on the development of the SFP. A TEP convened by a CMS contractor provided feedback and considerations on the preliminary SFP concepts, including the development of a methodology to identify hospice poor-performers, as

well as graduation and termination criteria, and public reporting. A 30-day call for nominations was held July 14 through August 14, 2022 and nine TEP members were selected, representing a diverse range of experience and expertise related to hospice care and quality. The final TEP feedback will be publicly available on the CMS website in April 2023.

Accordingly, CMS plans to include a proposal implementing an SFP in the CY 2024 Home Health Prospective Payment Update Rate proposed rule.

E. Proposals Regarding Hospice Ordering/Certifying Physician Enrollment

1. Medicare Provider Enrollment

Section 1866(j)(1)(A) of the Act requires the Secretary to establish a process for the enrollment of providers and suppliers into the Medicare program. The overarching purpose of the enrollment process is to help confirm that providers and suppliers furnishing services or items (or ordering/certifying the provision thereof) to Medicare beneficiaries meet all applicable Federal and state requirements. The process is, to an extent, a "gatekeeper" that prevents unqualified and potentially fraudulent individuals and entities from entering and inappropriately billing Medicare. Since 2006, we have undertaken rulemaking efforts to outline our enrollment procedures. These regulations are generally codified in 42 CFR part 424, subpart P (currently §§ 424.500 through 424.575 and hereafter occasionally referenced as subpart P). They address, among other things, requirements that providers and suppliers must meet to enroll in Medicare.

As outlined in § 424.510, one requirement is that the provider or supplier must complete, sign, and submit to its assigned Medicare Administrative Contractor (MAC) the appropriate enrollment form, typically the Form CMS-855 (OMB Control No. 0938-0685). The Form CMS-855, which can be submitted via paper or electronically through the internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process (System of Record Notice (SORN): 09-70-0532), collects important information about the provider or supplier. Such data includes, but is not limited to, general identifying information (for example, legal business name), licensure and/or certification data, and practice locations. After receiving the provider's or supplier's initial enrollment application, CMS or

the MAC reviews and confirms the information thereon and determines whether the provider or supplier meets all applicable Medicare requirements. We believe this screening process has greatly assisted CMS in executing its responsibility to prevent Medicare fraud, waste, and abuse.

As previously mentioned, over the years we have issued various final rules pertaining to provider enrollment. These rules were intended not only to clarify or strengthen certain components of the enrollment process but also to enable us to take further action against providers and suppliers: (1) engaging (or potentially engaging) in fraudulent or abusive behavior; (2) presenting a risk of harm to Medicare beneficiaries or the Medicare Trust Funds; or (3) that are otherwise unqualified to furnish Medicare services or items. Consistent with this, and for reasons explained in section III.E.2. of this proposed rule, we are proposing to require physicians who order or certify hospice services for Medicare beneficiaries (hereafter occasionally referenced as “hospice physicians”) to be enrolled in or validly opted-out of Medicare as a prerequisite for the payment of the hospice service in question.

2. Statutory and Policy Background

Section 6405(a) of the Affordable Care Act (which amended section 1834(a)(11)(B) of the Act) states that the Secretary may require that a physician ordering durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) be enrolled in Medicare for payment for the DMEPOS item to be made. Section 6405(b) of the Affordable Care Act (which amended sections 1814(a)(2) and 1835(a)(2) of the Act) contains a similar provision regarding the certification of a physician (or certain eligible professionals) for Part A and B home health services. Section 6405(c) of the Affordable Care Act, meanwhile, authorizes the Secretary to extend the requirements of sections 6405(a) and (b) to all other categories of items or services under title XVIII of the Act (including covered Part D drugs) that are ordered, prescribed, or referred by a physician or eligible professional enrolled in Medicare under section 1866(j) of the Act.

Pursuant to this authority, we finalized 42 CFR 424.507(a) and (b) in an April 27, 2012 final rule titled “Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements” (77 FR 25284). Section 424.507(a) and (b) collectively state that for payment to be

made for ordered imaging services, clinical laboratory services, DMEPOS items, or home health services, the service or item must have been ordered or certified by a physician or, when permitted, an eligible professional who—(1) is enrolled in Medicare in an approved status; or (2) has a valid opt-out affidavit on file with a Part A and B MAC. The purpose of § 424.507(a) and (b) is to confirm that the physicians and eligible professionals who order or certify the items and services referenced in those paragraphs are qualified.

In a proposed rule titled “Medicare, Medicaid, and Children’s Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process,” which was published in the **Federal Register** on March 1, 2016 (81 FR 10720), we proposed to significantly expand the scope of § 424.507(a) and (b) to include physicians and eligible professionals furnishing, ordering, referring, certifying, or prescribing any Part A and Part B service, item, or drug. Section 424.507(a) and (b) would no longer have been restricted to the four services and items referenced therein. A number of commenters expressed concern about the burden of having to enroll in Medicare pursuant to our proposal. Largely for this reason, we did not finalize our proposal in the subsequent September 10, 2019 final rule with comment period.⁴⁵

This non-finalization did not, however, negate our aforementioned and continued authority under section 6405(c) of the Affordable Care Act to apply the requirements of sections 6405(a) and (b) of the Affordable Care Act to other categories of Medicare covered items and services. We constantly review program integrity trends to determine whether certain provider and supplier types and services warrant closer scrutiny from a provider enrollment perspective. During this process, and notwithstanding the previously mentioned non-finalization, we have remained ready to propose expansions to § 424.507(a) and (b) should circumstances warrant. We believe that the latter situation currently exists with respect to hospices.

The OIG in July 2018 issued a study titled “Vulnerabilities in the Medicare Hospice Program Affect Quality Care and Program Integrity” (OEI–02–16–00570). This report noted that Medicare in 2016 spent about \$16.7 billion for hospice care for 1.4 million

beneficiaries, up from \$9.2 billion for fewer than 1 million beneficiaries in 2006; with this growth, the OIG stated, “significant vulnerabilities have arisen, one of which involves improper activity.”⁴⁶ The report described how some hospice fraud schemes involved paying recruiters to target beneficiaries who are not eligible for hospice care; other schemes involved physicians falsely certifying beneficiaries as terminally ill when they were not.⁴⁷ (Pursuant to 42 CFR 418.20(b), a physician must certify the beneficiary as being terminally ill in order for the beneficiary to be eligible to elect hospice care.) The OIG cited several examples of this behavior, including the following:

- Two certifying physicians from a California hospice were convicted of health care fraud for falsely certifying beneficiaries as terminally ill. The false certifications were part of a wider fraud scheme that the hospice owner organized. The scheme involved illegal payments to patient recruiters for bringing in beneficiaries, establishing fraudulent diagnoses, and altering medical records.⁴⁸

- A Mississippi hospice owner used patient recruiters to solicit beneficiaries who were not eligible for hospice care. These patients were unaware of their enrollment in hospice care. The owner submitted fraudulent charges and received more than \$1 million from Medicare.⁴⁹

- A Minnesota-based hospice chain agreed to pay \$18 million to resolve allegations that it improperly billed Medicare for care provided to beneficiaries who were ineligible for hospice because they were not terminally ill. The hospice chain also allegedly discouraged physicians from discharging ineligible beneficiaries.⁵⁰

- A hospice physician improperly certified a beneficiary who a hospital determined to be in “good shape” only days before as terminally ill.⁵¹

- A hospice falsely informed a beneficiary that she could remain on a liver transplant list even if she chose hospice care. However, she was removed from the transplant list when she elected hospice care. When the beneficiary learned of this, she ceased hospice care so she could be reinstated on the transplant list.⁵²

⁴⁶ <https://oig.hhs.gov/oei/reports/oei-02-16-00570.pdf>, p. 1.

⁴⁷ *Ibid.*, 6.

⁴⁸ *Ibid.*, p. 7.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, p. 6.

⁵² *Ibid.*

⁴⁵ “Medicare, Medicaid, and Children’s Health Insurance Programs; Program Integrity Enhancements to the Provider Enrollment Process” (84 FR 47794).

• A physician received kickbacks for recruiting beneficiaries, many of whom were not terminally ill but seeking opioids.⁵³

More generally, the OIG expressed concern that: (1) beneficiaries are put at risk when they are inappropriately enrolled in hospice care because they might be unwittingly forgoing needed treatment;⁵⁴ (2) “some hospice physicians are not always meeting requirements when certifying beneficiaries for hospice care;”⁵⁵ and (3) hospice fraud schemes are growing.⁵⁶

We note further that the Government Accountability Office (GAO) in October 2019 issued a report titled “Medicare Hospice Care: Opportunities Exist to Strengthen CMS Oversight of Hospice Providers” (GAO–20–10).⁵⁷ The GAO observed therein that the number of: (1) Medicare hospice beneficiaries had almost tripled to nearly 1.5 million by fiscal year 2017; and (2) Medicare hospice providers had doubled.⁵⁸ The GAO stated that in light of this growth: “It is imperative that CMS’s oversight of the quality of Medicare hospice care keeps pace with changes so that the agency can ensure the health and safety of these terminally ill beneficiaries.”⁵⁹

In light of the foregoing, we believe that expanding § 424.507(a) and (b) to include hospice services could strengthen the program integrity aspect of physician certifications. The careful screening that the enrollment process entails would help us determine whether the physician meets all Federal and state requirements (such as licensure) or presents any program integrity risks, such as past final adverse actions (as that term is defined in § 424.502). If an unenrolled physician certifies a Medicare beneficiary’s need for hospice care, we have insufficient background on the physician to know whether he or she was qualified to do so or has an adverse history. We believe that some of the aforementioned examples of improper behavior the OIG found can be at least partially avoided through closer vetting of the physician. Moreover, the screening process could help foster beneficiary health and safety by ensuring the physician is appropriately licensed.

3. Proposed Provisions

Using our authority under section 6405(c) of the Affordable Care Act, we

accordingly propose the following revisions to § 424.507.

First, the current heading of § 424.507(b) is “Conditions for payment of claims for covered home health services”. We propose to add “and hospice” between “health” and “services” to account for our intended inclusion of hospice services within § 424.507(b).

Second, the introductory text of § 424.507(b) reads: “To receive payment for covered Part A or Part B home health services, a provider’s home health services claim must meet all of the following requirements:”. To accommodate hospice services, we would revise this to state: “To receive payment for covered Part A or Part B home health services or for covered hospice services, a provider’s home health or hospice services claim must meet all of the following requirements:”.

Third, the opening language of § 424.507(b)(1) states: “The ordering/certifying physician, or the ordering/certifying physician assistant, nurse practitioner, or clinical nurse specialist working in accordance with State law . . .”. Under 42 CFR 418.22(b), and as alluded to previously, only a physician (which can include the hospice’s medical director) can certify that the beneficiary is terminally ill. We propose to revise the beginning of § 424.507(b)(1) to state: “The ordering/certifying physician for hospice or home health services, or, for home health services, the ordering/certifying physician assistant, nurse practitioner, or clinical nurse specialist working in accordance with State law . . .”. This would help clarify that § 424.507(b)(1) should not be read to imply that the eligible professionals listed therein can certify the beneficiary’s terminal status.

Fourth, we note that § 418.22(c)(1)(i) and (ii) state that for the initial 90-day hospice period, the following physicians, respectively, must certify that the beneficiary is terminally ill: (1) the hospice’s medical director or the physician member of the hospice interdisciplinary group; and (2) the individual’s attending physician (who must meet the definition of physician in § 410.20) if the beneficiary has one. For subsequent hospice periods, § 418.22(c)(2) states that only one of the physicians in § 418.22(c)(1)(i) must provide the certification. Given the hospice program integrity concerns previously mentioned, we believe that each certification required under § 418.22(c) should be by an enrolled or validly opted-out physician. Therefore, we propose to add § 424.507(b)(3) to reflect this requirement and would refer

therein to the requirements of § 418.22(c).

As already mentioned, we did not finalize our March 1, 2016 proposed revisions to § 424.507(b)(1) due partly to the burden involved. Our intended changes to § 424.507(b)(1) in this proposed rule would be significantly less burdensome on health care providers and suppliers than our March 1, 2016 proposal because they would only impact one additional provider/supplier type. Moreover, many hospice certifying physicians are already enrolled in Medicare or have validly opted-out, meaning that they need take no action should our proposal be finalized, thus further reducing the burden on the hospice physician community. We seek comment on this proposal.

4. Additional Information

We note that CMS is taking steps in the area of provider enrollment to capture additional information about provider and supplier ownership, including for hospices. For instance, we proposed in a December 15, 2022 Paperwork Reduction Act submission (87 FR 76626) to revise the Form CMS–855A Medicare provider enrollment application (Medicare Enrollment Application—Institutional Providers; OMB Control No. 0938–0685) to collect from providers/suppliers that complete this form important data such as (but not limited to):

- Requiring the provider/supplier/hospice to specifically identify via a checkbox whether a reported organizational owner is itself owned by another organization or individual.
- Requiring the provider/supplier/hospice to explicitly identify whether a listed organizational owner/manager does or does not fall within the categories of entities listed on the application (e.g., holding company, investment firm, etc.), with “private-equity company” and “real estate investment trust” added to this list of types of organizations.

This information will help CMS better understand the provider/supplier/hospice’s indirect ownership relationships and the types of entities that own it. Moreover, CMS is considering additional provider enrollment measures related to hospice ownership and management as a means of strengthening protections against hospice fraud schemes and to improve transparency.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-

⁵³ Ibid, p. 12.

⁵⁴ Ibid, p. 6.

⁵⁵ Ibid, p. 12.

⁵⁶ Ibid.

⁵⁷ <https://www.gao.gov/assets/gao-20-10.pdf>.

⁵⁸ Ibid., p. 25.

⁵⁹ Ibid.

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. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following

sections of this rule that contain information collection requirements.

A. Hospice Certifying Physician Enrollment

As proposed in section III E. of this proposed rule, physicians who order or certify hospice services for Medicare beneficiaries (hereafter occasionally referenced as “hospice physicians,” as described in section III. E) must be enrolled in Medicare or validly opted-out as a prerequisite for payment of the hospice service in question. Most hospice certifying physicians are already Medicare-enrolled or validly opted-out. Nonetheless, CMS data indicates that approximately 2,173 physicians who have ordered or certified Medicare hospice services are not. These physicians, as already stated, would be required to enroll or opt-out under our proposal.

Strictly for purposes of establishing an estimate, we would project that the average hospice physician would complete a Form CMS–855O enrollment application (Medicare Enrollment Application—Registration for Eligible Ordering and Referring Physicians and Non-Physician Practitioners—OMB Control No.: 0938–1135) rather than an opt-out affidavit to comply with our proposed requirements. Per previous estimates, it would take approximately 0.5 hours for a physician to complete the Form CMS–855O application.

According to the most recent wage data provided by the Bureau of Labor Statistics (BLS) for May 2021 (see https://www.bls.gov/oes/current/oes_nat.htm), the mean hourly wage for the general category of “Physicians, All Other” is \$111.30. With fringe benefits and overhead, the total per hour rate is \$222.60. The foregoing wage figures are outlined in Table 15:

TABLE 15—NATIONAL OCCUPATIONAL EMPLOYMENT AND WAGE ESTIMATES

Occupation title	Occupation code	Mean hourly wage (\$/hr)	Fringe benefits and overhead (\$/hr)	Adjusted hourly wage (\$/hr)
Physicians, All Other	29–1216	111.30	111.30	222.60

Our proposal would therefore result in a 1,087-hour burden at a cost of \$241,966 ($1,087 \times \$222.60$). (Most of these physicians would enroll during the first year of our proposal in order to continue ordering or certifying hospice services.) Averaged over the 3-year OMB-approval period, this results in annual burdens of 362 hours and \$80,655. This burden would be updated as part of a separate Paperwork Reduction Act submission.

B. Codification of HQRP Data Completeness Thresholds

The proposal to codify HQRP data completeness thresholds reflects the same thresholds which have been applied to the HQRP since the FY 2018 Hospice final rule (82 FR 36638). As such, this proposal would not impose any additional collection of information burden on hospices.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will

respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Statement of Need

1. Hospice Payment

This proposed rule meets the requirements of our regulations at § 418.306(c) and (d), which require annual issuance, in the **Federal Register**, of the hospice wage index based on the most current available CMS hospital wage data, including any changes to the definitions of CBSAs or previously used Metropolitan Statistical Areas (MSAs), as well as any changes to the methodology for determining the per diem payment rates. This proposed rule would also update payment rates for each of the categories of hospice care, described in § 418.302(b), for FY 2024 as required under section 1814(i)(1)(C)(ii)(VII) of the Act. The payment rate updates are subject to changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act.

2. Hospice Quality Reporting Program

Sections 1814(i)(5)(A) through (C) of the Act authorizes the HQRP which requires that hospices submit quality data, based on measures to be specified by the Secretary. In the FY 2012

Hospice Wage Index and Rate Update final rule (76 FR 47320 through 47324), we implemented a HQRP as required by those sections. Hospices were required to begin collecting quality data in October 2012 and submit those quality data in 2013. Section 1814(i)(5)(A)(i) of the Act requires that beginning with FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that FY. Section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA 2021 to change the payment reduction for failing to meet hospice quality reporting requirements from 2 to 4 percentage points. This policy will apply beginning with the FY 2024 annual payment update (APU) that is based on CY 2022 quality data. Specifically, the Act requires that, for FY 2014 through FY 2023, the Secretary shall reduce the market basket update by 2 percentage points and beginning with the FY 2024 APU and for each subsequent year, the Secretary shall reduce the market basket update by 4 percentage points for any hospice that does not comply with the quality data submission requirements for that FY.

3. Impact of Hospice Ordering/ Certifying Physician Enrollment

We believe that the only impact of this proposal would involve the burden estimated in section IV of this proposed rule regarding the completion of the Form CMS-855O, which we projected to be \$241,966, over a 3-year period, or \$80,655 per year.

B. Overall Impacts

1. Hospice Payment

We estimate that the aggregate impact of the payment provisions in this proposed rule would result in an estimated increase of \$720 million in payments to hospices, resulting from the hospice payment update percentage of 2.8 percent for FY 2024. The impact analysis of this proposed rule represents the projected effects of the changes in hospice payments from FY 2023 to FY 2024. Using the most recent complete data available at the time of rulemaking, in this case FY 2022 hospice claims data as of January 22, 2023, we simulate total payments using the FY 2023 wage index (pre-floor, pre-reclassified hospital wage index with the hospice floor, and the 5 percent cap on wage index decreases) and FY 2023 payment rates and compare it to our simulation of total payments using FY 2022 utilization claims data, the FY 2024 hospice wage index (pre-floor, pre-reclassified hospital wage index with hospice floor, and the 5-percent cap on wage index decreases) and FY 2023 payment rates. By dividing payments for each level of care (RHC days 1 through 60, RHC days 61+, CHC, IRC, and GIP) using the FY 2023 wage index and payment rates for each level of care by the FY 2024 wage index and FY 2023 payment rates, we obtain a wage index standardization factor for each level of care. We apply the wage index standardization factors so that the aggregate simulated payments do not increase or decrease due to changes in the wage index.

Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon hospices.

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 Social Security 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; (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.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

A regulatory impact analysis (RIA) must be prepared for rules that are significant under section 3(f)(1) as described above. We estimate that this rulemaking exceeds the \$100 million threshold under section 3(f)(1). Accordingly, we have prepared a RIA, that to the best of our ability, presents the costs and benefits of the rulemaking.

C. Detailed Economic Analysis

1. Proposed Hospice Payment Update for FY 2024

The FY 2024 hospice payment impacts appear in Table 16. We tabulate

the resulting payments according to the classifications (for example, provider type, geographic region, facility size), and compare the difference between current and future payments to determine the overall impact. The first column shows the breakdown of all hospices by provider type and control (non-profit, for-profit, government, other), facility location, facility size. The second column shows the number of hospices in each of the categories in the first column. The third column shows the effect of using the FY 2024 updated wage index data with a 5-percent cap on wage index decreases. This represents the effect of moving from the FY 2023 hospice wage index to the FY 2024 hospice wage index with a 5-percent cap on wage index decreases. The aggregate impact of the changes in column three is zero percent, due to the hospice wage index standardization factor. However, there are distributional effects of the FY 2024 hospice wage index. The fourth column shows the effect of the hospice payment update percentage as mandated by section 1814(i)(1)(C) of the Act, and is consistent for all providers. The proposed hospice payment update percentage of 2.8 percent is based on the proposed 3.0 percent inpatient hospital market basket update, reduced by a proposed 0.2 percentage point productivity adjustment. The fifth column shows the total effect of the proposed updated wage data and the proposed hospice payment update percentage on FY 2024 hospice payments but does not include the effect of moving from the 2 percent reduction to the 4 percent reduction for failure to report quality. It is projected aggregate payments would increase by 2.8 percent; assuming hospices do not change their billing practices. As illustrated in Table 16, the combined effects of all the proposals vary by specific types of providers and by location. We note that simulated payments are based on utilization in FY 2022 as seen on Medicare hospice claims (accessed from the CCW in January 22, 2023) and only include payments related to the level of care and do not include payments related to the service intensity add-on.

As illustrated in Table 16, the combined effects of all the proposals vary by specific types of providers and by location.

TABLE 16—PROJECTED IMPACT TO HOSPICES FOR FY 2024

Hospice subgroup	Hospices	FY 2024 updated wage data (%)	FY 2024 proposed hospice payment update (%)	Overall total impact for FY 2024 (%)
All Hospices	5,640	0.0	2.8	2.8
Hospice Type and Control				
Freestanding/Non-Profit	567	−0.1	2.8	2.7
Freestanding/For-Profit	4,007	0.0	2.8	2.8
Freestanding/Government	41	−0.2	2.8	2.6
Freestanding/Other	353	0.3	2.8	3.1
Facility/HHA Based/Non-Profit	329	−0.1	2.8	2.7
Facility/HHA Based/For-Profit	188	−0.4	2.8	2.4
Facility/HHA Based/Government	73	0.1	2.8	2.9
Facility/HHA Based/Other	82	0.0	2.8	2.8
Subtotal: Freestanding Facility Type	4,968	0.0	2.8	2.8
Subtotal: Facility/HHA Based Facility Type	672	−0.1	2.8	2.7
Subtotal: Non-Profit	896	−0.1	2.8	2.7
Subtotal: For-Profit	4,195	0.0	2.8	2.8
Subtotal: Government	114	−0.1	2.8	2.7
Subtotal: Other	435	0.2	2.8	3.0
Hospice Type and Control: Rural				
Freestanding/Non-Profit	127	−0.3	2.8	2.5
Freestanding/For-Profit	358	−0.3	2.8	2.5
Freestanding/Government	23	−0.7	2.8	2.1
Freestanding/Other	50	−0.2	2.8	2.6
Facility/HHA Based/Non-Profit	128	−0.4	2.8	2.4
Facility/HHA Based/For-Profit	51	−0.1	2.8	2.7
Facility/HHA Based/Government	57	−0.2	2.8	2.6
Facility/HHA Based/Other	44	−0.3	2.8	2.5
Hospice Type and Control: Urban				
Freestanding/Non-Profit	440	−0.1	2.8	2.7
Freestanding/For-Profit	3,649	0.1	2.8	2.9
Freestanding/Government	18	−0.1	2.8	2.7
Freestanding/Other	303	0.3	2.8	3.1
Facility/HHA Based/Non-Profit	201	0.0	2.8	2.8
Facility/HHA Based/For-Profit	137	−0.5	2.8	2.3
Facility/HHA Based/Government	16	0.3	2.8	3.1
Facility/HHA Based/Other	38	0.1	2.8	2.9
Hospice Location: Urban or Rural				
Rural	838	−0.3	2.8	2.5
Urban	4,802	0.0	2.8	2.8
Hospice Location: Region of the Country (Census Division)				
New England	151	−0.7	2.8	2.1
Middle Atlantic	284	0.5	2.8	3.3
South Atlantic	607	0.3	2.8	3.1
East North Central	587	−0.5	2.8	2.3
East South Central	255	−0.1	2.8	2.7
West North Central	420	−0.3	2.8	2.5
West South Central	1,101	0.2	2.8	3.0
Mountain	589	−0.3	2.8	2.5
Pacific	1,597	0.2	2.8	3.0
Outlying	49	−1.6	2.8	1.2
Hospice Size				
0–3,499 RHC Days (Small)	1,414	0.1	2.8	2.9
3,500–19,999 RHC Days (Medium)	2,551	0.0	2.8	2.8
20,000+ RHC Days (Large)	1,675	0.0	2.8	2.8

Source: FY 2022 hospice claims data from CCW accessed on January 22, 2023.

Note: The overall total impact reflects the addition of the individual impacts, which includes the wage index impact as well as the proposed 2.8 percent market basket update. However, it does not include the effect of moving from the 2 percent reduction to the 4 percent reduction for failure to report quality data.

Region Key:

New England=Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Middle Atlantic=Pennsylvania, New Jersey, New York.

South Atlantic=Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia.

East North Central=Illinois, Indiana, Michigan, Ohio, Wisconsin.

East South Central=Alabama, Kentucky, Mississippi, Tennessee.

West North Central=Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.

West South Central=Arkansas, Louisiana, Oklahoma, Texas.

Mountain=Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming.

Pacific=Alaska, California, Hawaii, Oregon, Washington.

2. Regulatory Review Cost Estimation

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review this rule, we assume that the total number of unique commenters on last year's proposed rule will be the number of reviewers of this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed last year's rule in detail, and it is also possible that some reviewers chose not to comment on the proposed rule. For these reasons we thought that the number of past commenters would be a fair estimate of the number of reviewers of this proposed rule. We welcome any comments on the approach in estimating the number of entities which will review this proposed rule. We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule. We are soliciting public comments on this assumption.

Using the occupational wage information from the BLS for medical and health service managers (Code 11-9111) from May 2021; we estimate that the cost of reviewing this rule is \$115.22 per hour, including overhead and fringe benefits (https://www.bls.gov/oes/current/oes_nat.htm). This proposed rule consists of approximately 30,000 words. Assuming an average reading speed of 250 words per minute, it would take approximately 1 hour for staff to review half of it. For each hospice that reviews the rule, the estimated cost is \$115.22 (1 hour × \$115.22). Therefore, we estimate that the total cost of reviewing this regulation is \$8,526.28 (\$115.22 × 74 reviewers).

3. Impacts for the Hospice Quality Reporting Program for FY 2024

The HQRP requires the active collection under OMB control number #0938-1153 (CMS 10390; expiration 02/29/2024) of the Hospice Items Set (HIS) and CAHPS® Hospice Survey (OMB control number 0938-1257) (CMS-10537; expiration 01/31/2023). Failure to submit data required under section 1814(i)(5) of the Act with respect to a CY will result in the reduction of the annual hospice market basket percentage increase otherwise applicable to a hospice for that calendar year. From FY 2014 through FY 2023, hospices that failed to report quality data had their market basket percentage increase reduced by 2 percentage points. As noted in section C.5. of this proposed rule, section 1814(i)(5)(A)(i) of the Act was amended by section 407(b) of Division CC, Title IV of the CAA 2021 (Pub. L. 116-260) to change the payment reduction for failing to meet hospice quality reporting requirements to 4 percentage points, beginning with FY 2024. This section analyzes the estimated impact of the transition from 2 percentage points to 4 percentage points.

Based on historical performance trends, we estimate that roughly 18.4 percent of hospices (an estimated 1,049 out of approximately 5,700 active hospices) will fail to receive the full annual percentage increase in FY 2024, if active Medicare-certified hospices perform similarly in CY 2022 to hospice performance in previous years. We project that the 4 percentage point penalty for hospices will represent approximately \$53 million in hospice payment dollars during the reporting period, out of an estimated total \$23.8 billion paid to all hospices. The net impact of the policy change from 2 percent APU penalty to 4 percent APU penalty is estimated to be \$26.5 million.

D. Alternatives Considered

1. Hospice Payment

Since the hospice payment update percentage is determined based on statutory requirements, we did not

consider not updating the hospice payment rates by the payment update percentage. The proposed 2.8 percent hospice payment update percentage for FY 2024 is based on a proposed 3.0 percent inpatient hospital market basket update for FY 2024, reduced by a proposed 0.2 percentage point productivity adjustment. Payment rates since FY 2002 have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for subsequent years must be the market basket percentage increase for that FY. Section 3401(g) of the Affordable Care Act also mandates that, starting with FY 2013 (and in subsequent years), the hospice payment update percentage will be annually reduced by changes in economy-wide productivity as specified in section 1886(b)(3)(B)(xi)(II) of the Act. For FY 2024, since the hospice payment update percentage is determined based on statutory requirements at section 1814(i)(1)(C) of the Act, we cannot consider not updating the hospice payment rates by the hospice payment update percentage.

2. Hospice Quality Reporting Program

We did not consider any alternatives in this proposed rule.

3. Hospice Physician Enrollment

We did not consider any alternatives to our proposal to require physicians who order or certify hospice services for Medicare beneficiaries to be enrolled in or validly opted-out of Medicare as a prerequisite for the payment of the hospice service in question. This is because the enrollment process is the only available, feasible means of ascertaining the physician's compliance with all applicable requirements and whether he or she has any adverse legal history.

E. Accounting Statement

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), in Table 11, we have prepared an accounting statement showing the classification of the

expenditures associated with the provisions of this proposed rule. Table 17 provides our best estimate of the possible changes in Medicare payments

under the hospice benefit as a result of the policies in this proposed rule. This estimate is based on the data for 5,640 hospices in our impact analysis file,

which was constructed using FY 2022 claims available in January 22, 2023. All expenditures are classified as transfers to hospices.

TABLE 17—ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED TRANSFERS AND COSTS, FROM FY 2023 TO FY 2024

Category	Transfers
Annualized Monetized Transfers	\$720 million.*
From Whom to Whom?	Federal Government to Medicare Hospices.
Category	Costs
Annualized Monetized Costs Associated with Changes in APU Reductions due to Data Submission Requirements.	\$26.5 million.**

* The increase of \$720 million in transfer payments is a result of the proposed 2.8 percent hospice payment update compared to payments in FY 2023.

** The \$26.5 million is the amount CMS is projected to recoup based on the increased penalty for hospices that fail to meet HQR data submission requirements, compared to APU penalties in FY 2023.

F. Regulatory Flexibility Act (RFA)

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. We consider all hospices as small entities as that term is used in the RFA. The North American Industry Classification System (NAICS) was adopted in 1997 and is the current standard used by the Federal statistical agencies related to the U.S. business economy. There is no NAICS code specific to hospice services.

Therefore, we utilized the NAICS U.S. industry title “Home Health Care Services” and corresponding NAICS code 621610 in determining impacts for small entities. The NAICS code 621610 has a size standard of \$16.5 million.⁶⁰ Table 18 shows the number of firms, revenue, and estimated impact per home health care service category.

TABLE 18—NUMBER OF FIRMS, REVENUE, AND ESTIMATED IMPACT OF HOME HEALTH CARE SERVICES BY NAICS CODE 621610

NAICS code	NAICS description	Enterprise size	Number of firms	Receipts (\$1,000)	Estimated impact (\$1,000) per enterprise size
621610	Home Health Care Services	<100	5,861	210,697	35.95
621610	Home Health Care Services	100–499	5,687	1,504,668	264.58
621610	Home Health Care Services	500–999	3,342	2,430,807	727.35
621610	Home Health Care Services	1,000–2,499	4,434	7,040,174	1,587.77
621610	Home Health Care Services	2,500–4,999	1,951	6,657,387	3,412.29
621610	Home Health Care Services	5,000–7,499	672	3,912,082	5,821.55
621610	Home Health Care Services	7,500–9,999	356	2,910,943	8,176.81
621610	Home Health Care Services	10,000–14,999	346	3,767,710	10,889.34
621610	Home Health Care Services	15,000–19,999	191	2,750,180	14,398.85
621610	Home Health Care Services	≥20,000	961	51,776,636	53,877.87
621610	Home Health Care Services	Total	23,801	82,961,284	3,485.62

Source: Data obtained from United States Census Bureau table “us 6digitnaics_rcptsize 2017” (SOURCE: 2017 County Business Patterns and Economic Census) Release Date: 5/28/2021: <https://www2.census.gov/programs-surveys/susb/tables/2017/>.

Notes: Estimated impact is calculated as Receipts (\$1,000)/Number of firms.

The Department of Health and Human Services practice in interpreting the RFA is to consider effects economically “significant” only if greater than 5 percent of providers reach a threshold of 3 to 5 percent or more of total revenue or total costs. The majority of hospice visits are Medicare paid visits and therefore the majority of hospice’s revenue consists of Medicare payments. Based on our analysis, we conclude that

the policies finalized in this rule would result in an estimated total impact of 3 to 5 percent or more on Medicare revenue for greater than 5 percent of hospices. Therefore, the Secretary has certified that this hospice proposed rule would have significant economic impact on a substantial number of small entities. We estimate that the net impact of the policies in this rule is a 2.8 percent or approximately \$720 million

in increased revenue to hospices in FY 2024. The 2.8 percent increase in expenditures when comparing FY 2023 payments to estimated FY 2024 payments is reflected in the last column of the first row in Table 18 and is driven solely by the impact of the hospice payment update percentage reflected in the fourth column of the impact table. In addition, small hospices would experience a greater estimated increase

⁶⁰ https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019%2C%202019_Rev.pdf.

(4.1 percent), compared to large hospices (3.8 percent) due to the policy to cap wage index decreases at 5 percent. Further detail is presented in Table 18, by hospice type and location.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a MSA and has fewer than 100 beds. This rule will only affect hospices. Therefore, the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals (see Table 18).

G. Unfunded Mandates Reform Act (UMRA)

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 2023, that threshold is approximately \$177 million. This rule is not anticipated to have an effect on state, local, or tribal governments, in the aggregate, or on the private sector of \$177 million or more in any 1 year.

H. Federalism

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. We have reviewed this rule under these criteria of Executive Order 13132, and have determined that it will not impose substantial direct costs on state or local governments.

I. Conclusion

We estimate that aggregate payments to hospices in FY 2024 will increase by \$720 million as a result of the market basket update, compared to payments in FY 2023. We estimate that in FY 2024, hospices in urban areas will experience, on average, a 2.8 percent increase in estimated payments compared to FY 2023; while hospices in rural areas will experience, on average, a 2.5 percent increase in estimated payments compared to FY 2023. Hospices providing services in the Middle and

South Atlantic regions would experience the largest estimated increases in payments of 3.3 percent and 3.1 percent, respectively. Hospices serving patients in areas in the Outlying regions would experience, on average, the lowest estimated increase of 1.2 percent in FY 2024 payments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 28, 2023.

List of Subjects

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 424

Health facilities, Health professions, Medicare Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below.

PART 418—HOSPICE CARE

- 1. The authority citation for part 418 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

- 2. Amend § 418.22 by revising paragraph (a)(4)(ii) to read as follows:

§ 418.22 Certification of terminal illness.

(a) * * *

(4) * * *

(ii) During a Public Health Emergency, as defined in § 400.200 of this chapter, or through December 31, 2024, whichever is later, if the face-to-face encounter conducted by a hospice physician or hospice nurse practitioner is for the sole purpose of hospice recertification, such encounter may occur via a telecommunications technology and is considered an administrative expense. *Telecommunications technology* means the use of interactive multimedia communications equipment that includes, at a minimum, the use of audio and video equipment permitting two-way, real-time interactive communication between the patient and the distant site hospice physician or hospice nurse practitioner.

* * * * *

§ 418.204 [Amended]

- 3. Amend § 418.204 by removing paragraph (d).

§ 418.309 [Amended]

- 4. Amend § 418.309 in paragraphs (a)(1) and (2) by removing “2030” and adding “2032” in its place.

- 5. Amend § 418.312 by adding paragraph (j) to read as follows:

§ 418.312 Data submission requirements under the hospice quality reporting program.

* * * * *

(j) *Data completion thresholds.* (1) Hospices must meet or exceed data submission threshold set at 90 percent of all required Hospice Item Set (HIS) or successor instrument records within 30-days of the beneficiary’s admission or discharge and submitted through the CMS designated data submission systems.

(2) A hospice must meet or exceed the data submission compliance threshold in paragraph (j)(1) of this section to avoid receiving a 4-percentage point reduction to its annual payment update for a given fiscal year as describe under § 412.306(b)(2) of this chapter.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

- 6. The authority for part 424 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

- 7. Amend § 424.507 by revising paragraphs (b) introductory text and (b)(1) introductory text and adding paragraph (b)(3) to read as follows:

§ 424.507 Ordering covered items and services for Medicare beneficiaries.

* * * * *

(b) *Conditions for payment of claims for covered home health and hospice services.* To receive payment for covered Part A or Part B home health services or for covered hospice services, a provider’s home health or hospice services claim must meet all of the following requirements:

(1) The ordering/certifying physician for hospice or home health services, or, for home health services, the ordering/certifying physician assistant, nurse practitioner, or clinical nurse specialist working in accordance with State law, must meet all of the following requirements:

* * * * *

(3) For claims for hospice services, the requirements of paragraph (b) of this section apply with respect to any physician described in § 418.22(c) of this chapter who made the applicable certification described in § 418.22(c).

* * * * *

Dated: March 28, 2023.

Xavier Becerra,

*Secretary, Department of Health and Human
Services.*

[FR Doc. 2023-06769 Filed 3-31-23; 4:15 pm]

BILLING CODE 4120-01-P

Reader Aids

Federal Register

Vol. 88, No. 64

Tuesday, April 4, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

Laws **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000**

The United States Government Manual **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.govinfo.gov.

Federal Register information and research tools, including Public Inspection List and electronic text are located at: www.federalregister.gov.

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

19547-19796..... 3
19797-20058..... 4

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10537.....19797
10538.....19799

10 CFR

430.....19801

14 CFR

25.....19547
33.....19801
39.....19811, 19815
71.....19817, 19819, 19820,
19821, 19822, 19823

Proposed Rules:
71.....19895

15 CFR

922.....19824

21 CFR

Proposed Rules:
1308.....19896

23 CFR

Proposed Rules:
661.....19571

28 CFR

0.....19830

30 CFR

Proposed Rules:
585.....19578

31 CFR

591.....19840, 19842

32 CFR

199.....19844

33 CFR

100.....19856, 19857
Proposed Rules:
165.....19579

37 CFR

1.....19862
41.....19862

38 CFR

17.....19862

Proposed Rules:

46.....19581

40 CFR

180.....19873

Proposed Rules:

52.....19901

42 CFR

Proposed Rules:
418.....20022
424.....20022

43 CFR

Proposed Rules:
1600.....19583
6100.....19583

47 CFR

73.....19549

49 CFR

Proposed Rules:
216.....19730
231.....19730
238.....19730

50 CFR

17.....19549, 19880
648.....19559

LIST OF PUBLIC LAWS Note: No public bills which have become law were received by the Office of the Federal Register for inclusion	in today's List of Public Laws. Last List January 23, 2023	Public Laws Electronic Notification Service (PENS) PENS is a free email notification service of newly	enacted public laws. To subscribe, go to https://portalguard.gsa.gov/—layouts/PG/register.aspx. Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. PENS cannot respond to specific inquiries sent to this address.
--	---	---	---