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The President

Establishment of the Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon National Monument

By the President of the United States of America

A Proclamation

Since time immemorial, many Tribes of the Southwest have lived and prayed among the canyons and plateaus of a landscape unlike any other in the world. The region is described in numerous languages. Many of the Indigenous names for the area reflect the deep interconnection between the land and its Tribal Nations. For example, the Havasupai call it baaj nwaavjo, or “where Indigenous peoples roam.” To the Hopi, it is i'tah kukveni, or “our ancestral footprints.” In English, we call the canyon that lies at the center of this region “the Grand Canyon.”

In addition to its profound historical, cultural, and religious significance, the Grand Canyon region is known around the world for containing some of the greatest natural wonders on the planet. The area supports remarkable geology and a diversity of wildlife and plants that flourish in its vast and well-connected ecosystem.

The Grand Canyon region has played a central role in America's conservation history. In 1893, 2 years after the establishment of the National Forest System, the area was designated as the Grand Canyon Forest Reserve. In 1908, 2 years after the Congress passed the Antiquities Act, President Theodore Roosevelt used his authority under the Act to protect some of the deepest canyons along the Colorado River as a national monument. In 1919, 3 years after the establishment of the National Park Service, the Congress created Grand Canyon National Park. Today, millions of people from around the world come to the Grand Canyon region each year to visit, learn in, and explore the national park and the plateaus and canyons that surround it. The conservation and stewardship of the broader Grand Canyon region have helped safeguard the integrity of vital natural resources important to the Nation's health and well-being, including clean drinking water that flows through the region's springs and streams and into the Colorado River, before eventually reaching the taps of millions of homes across the Southwest.

The history of the lands and resources in the Grand Canyon region also tells a painful story about the forced removal and dispossession of Tribal Nations and Indigenous peoples. The Federal Government used the establishment of Grand Canyon National Park to justify denying Indigenous peoples access to their homelands, preventing them from engaging in traditional cultural and religious practices within the boundaries of the park. Despite these barriers, Tribal Nations and Indigenous peoples persevered and continued to conduct their long-standing practices on sacred homelands just outside the boundaries of the national park, among the vast landscapes of plateaus, canyons, and tributaries of the Colorado River.

The lands outside of the national park contain myriad sensitive and distinctive resources that contribute to the Grand Canyon region's renown. In many of these lands outside of the national park, however, the Federal Government permitted or encouraged intensive resource exploration and extraction to meet the needs of the nuclear age. For decades, the Tribal Nations and Indigenous peoples of the Grand Canyon region have worked to protect the health and wellness of their people and the lands, waters,

and cultural resources of the region from the effects of this development, including by cleaning up the abandoned mines and related pollution that has been left behind.

Much of the health and vitality of the Grand Canyon region today is attributable to the tireless work of Tribal Nations and Indigenous peoples, the lands' first and steadfast stewards. In the tradition of their ancestors, who fought to defend the sovereignty of their nations and to regain access to places and sites essential to their cultural and traditional practices, Tribal Nations and Indigenous peoples have remained resolute in their commitment to protect the landscapes of the region, which are integral to their identity and indispensable to the health and well-being of millions of people living in the Southwest.

Efforts to address the legacy of dispossession and exclusion of Tribal Nations and Indigenous peoples in the Grand Canyon region and to conserve the region's cultural and natural resources beyond the boundaries of Grand Canyon National Park span several decades. In 1975, the Congress took a first step toward addressing these earlier injustices when it restored lands along the Grand Canyon's rim to the Havasupai Tribe and established cultural use lands as part of an expansion of Grand Canyon National Park. More recently, legislation has been introduced in multiple Congresses to permanently conserve the lands to the south, northeast, and northwest of Grand Canyon National Park for the benefit of Tribes, the public, and future generations. In addition, in 2012, the Secretary of the Interior withdrew many of these lands from the location of new mining claims for a 20-year period.

Conserving lands that stretch beyond Grand Canyon National Park through an abiding partnership between the United States and the region's Tribal Nations will ensure that current and future generations can learn from and experience the compelling and abundant historic and scientific objects found there, and will also serve as an important next step in understanding and addressing past injustices.

The natural and cultural objects of the lands have historic and scientific value that is unique, rich, and well-documented. The sweeping plateaus to the south, northeast, and northwest of Grand Canyon National Park constitute three distinct areas, each of which is an integral part of the broader Grand Canyon ecosystem. The northwestern area, which is administered by both the Bureau of Land Management (BLM) within the Department of the Interior and the U.S. Forest Service (Forest Service) within the Department of Agriculture, begins at the western edge of the Kanab watershed and northern boundary of Grand Canyon National Park and stretches north to the Shinarump Cliffs and Moonshine Ridge. The northeastern area primarily includes parts of House Rock Valley, which are administered by the BLM and the Forest Service, and extends west from Marble Canyon along the Colorado River to the edge of the Kaibab Plateau. The southern area includes a portion of the Coconino Plateau to the south of Grand Canyon National Park that is managed by the Forest Service, and extends from the border of the Havasupai Indian Reservation in the west to the Navajo Nation in the east.

While the greater Grand Canyon region is indisputably a cultural resource in its entirety, the landscapes in these three discrete areas are themselves historically and scientifically significant. They give context to the individual geologic features and other resources found there, contain numerous archaeological sites, and provide havens for sensitive and endangered species—including the California condor, desert bighorn sheep, and endemic plant and animal species—all of which constitute objects of independent historic or scientific interest. The landscapes are also integrally connected to the Indigenous Knowledge amassed by the Tribal Nations and Indigenous peoples in the area over countless generations. Some of the objects in these areas are sacred to Tribal Nations; are sensitive, rare, or vulnerable to vandalism and theft; or are unsafe to visit. Therefore, revealing their specific names or locations could pose a danger to the objects or to the public.

These areas lie within the homelands of numerous Tribal Nations—including the Havasupai Tribe, Hopi Tribe, Hualapai Tribe, Kaibab Band of Paiute Indians, Las Vegas Paiute Tribe, Moapa Band of Paiutes, Paiute Indian Tribe of Utah, Navajo Nation, San Juan Southern Paiute Tribe, Yavapai-Apache Nation, Pueblo of Zuni, and the Colorado River Indian Tribes—who describe the lands here as a cultural landscape to which their ancestors belong. The surrounding plateaus, canyons, and tributaries of the Colorado River are central and sacred components of the origin and history of multiple Tribal Nations, weaving together overlapping spiritual, cultural, and territorial systems. Many Tribes note that their ancestors are buried here and refer to these areas as their eternal home, a place of healing, and a source of spiritual sustenance. Like their ancestors, Indigenous peoples continue to use these areas for religious ceremonies; hunting; and gathering of plants, medicines, and other materials, including some found nowhere else on Earth.

The areas to the south, northeast, and northwest of Grand Canyon National Park contain over 3,000 known cultural and historic sites, including 12 properties listed on the National Register of Historic Places, and likely a great many more in areas not yet surveyed. All three areas contain locations that are sacred or significant to the Apache, Havasupai, Hopi, Hualapai, Navajo, Southern Paiute, Yavapai, and Zuni Peoples, whose ancestors lived, hunted, farmed, and gathered here, some moving among camps in different places to take advantage of the best seasonal times and locations to hunt or harvest resources. More than 50 species of plants that grow in these areas, including catsclaw, willow, soapweed, and piñon, have been identified as important to Tribal Nations. Historic shared use by different Tribes of the plateaus in the three areas, including for farming, hunting, and resource gathering on the Coconino Plateau, helped build strong, intergenerational relationships among the Tribal Nations that call this region home.

For hundreds of years, Tribal Nations and Indigenous peoples used trails across portions of all three distinct landscapes to access sacred or important sites in surrounding areas such as the Grand Canyon, Mount Trumbull, and the Hopi salt mine. For example, routes throughout the southern area connect the Grand Canyon with the Paiute, Hopi, and Navajo homelands. Historically significant pathways in all three areas can still be seen on the landscape, and in many cases, they continue to be actively used.

In the northwestern area, within the larger Kanab Creek drainage and particularly along Kanab Creek, there is evidence of ancient villages and habitations, including cliff houses, storage sites, granaries, pictographs, and pottery. The Kanab Plateau contains dwelling sites, including one known to have been occupied nearly 1,000 years ago, evidencing agricultural use and hunting by early inhabitants. The Kaibab Band of Paiute farmed in the area, which served as an important trade and transportation route, resource procurement and hunting area, and refuge during Euro-American encroachment into traditional territories. The pictographs and petroglyphs found in the Kanab Creek drainage present a spectacular collection of rock art. One pictograph and petroglyph site in Kanab Creek Canyon has been used for over 2,000 years, including for Ghost Dance ceremonies in the 19th century. Also in the northwest, the BLM manages the Moonshine Spring and its associated historic cultural sites as the Moonshine Ridge Area of Critical Environmental Concern. Nearby Antelope Spring, Shinarump Cliffs, and Yellowstone Spring house historically important cultural sites, and the northwestern portion of the area is a historically significant resource and hunting area for the Southern Paiute.

In House Rock Valley in the northeastern area, many remnants of homes, storage buildings, pottery, and tools illustrate the area's rich and extensive human history. The area has long been historically important to Tribal Nations for hunting and resource gathering, including to the Kaibab Band of Paiute for hunting deer and pronghorn and gathering piñon nuts, and to the San Juan Paiute for seasonal seed collection.

In the southern area, visible for miles in all directions, rises Red Butte, a towering landmark that is eligible for inclusion on the National Register of Historic Places as a traditional cultural property. Called Wii'i Gdwiisa by the Havasupai and Tsé zhin li'ahi by the Navajo, it is defined by an eroded rock and basalt cap from ancient lava and is sacred to the Havasupai, Hualapai, Navajo, Hopi, and Zuni Peoples. Red Butte and the surrounding area are central to Tribal creation stories, and dense concentration of flaked stone tools and pottery provide evidence of thousands of years of human habitation there. Additionally, more recent Navajo and Havasupai encampments in the area date to the early to middle 1900s. South of Red Butte, Gray Mountain, called Dziłbeeh by the Navajo, is mentioned in Navajo ceremonial songs, stories, and rituals, and has long served as a refuge for the Navajo people.

There are many other physical remnants of human habitation in the southern area, including lithic sites containing stone tools that may be more than 10,000 years old and more recent sites containing finely decorated pottery sherds that are between 800 and 1,100 years old. Across the southern area, there is evidence of tool production using local materials and the historic use of fire for land management. Rock paintings, cave shelters, shrines, pit houses, masonry structures, and sites for religious ceremonies can be found throughout.

The southern area also provides important opportunities for research about ancient occupation, including a long-term archaeological study area in the upper basin of the Coconino Plateau where research has been conducted for decades. This study area has led to research on the sourcing of materials for pottery, the conditions that influenced where people lived and congregated, the history and use of anthropogenic fire, methods for recording archaeological sites, methods for protecting cultural resources, and human modification of bedrock, among other topics. Additionally, research has occurred in the area on the relationship between historic climate change and human occupation, including how climate changes affected construction techniques by the Indigenous peoples in the region, the viability of farming, the use of fire, and available resources.

A defining feature of the three areas is their unique sedimentary and tectonic history, which has resulted in high scientific interest and made the groundwater dynamics of the region among the best studied in the United States. Subsequent studies of the areas' hydrology may prove important to understanding the formation of the Grand Canyon and the dynamics of groundwater and aquifers in the arid Colorado Plateau. Groundwater moving through this complex and distinctive system eventually flows into the meandering and majestic Colorado River, across hundreds of miles of arid and desert lands. The areas' unique hydrology has supported Indigenous peoples and other forms of life since time immemorial and continues to play an essential role in providing drinking water and supporting agricultural production and other services for millions of people across the Southwest.

The three areas' extensive fractures and faults direct the flow of water, resulting in the formation of seeps and springs that serve as small oases in the otherwise hot, dry landscape, and support some of the most biodiverse habitats in the Colorado Plateau. The hydrologic features of these landscapes are unique and highly interconnected, with groundwater moving through the Redwall-Muav aquifer in the south and through fractures and linked cave passages. The Havasupai and Hualapai Tribes, as well as the town of Tusayan, Arizona, and other towns in the region, rely on the southern area's groundwater. Ultimately, the areas' groundwater flows to the surrounding tributaries, into the Colorado River, and through the Grand Canyon, serving as one of many features tying this landscape together. Much of the water in the areas to the northeast, northwest, and south of the Grand Canyon, from creeks to streams, only runs seasonally based on melting snowpack and monsoon rains.

The geology and hydrologic system of the Grand Canyon and these three landscapes are deeply intertwined. Located within the Colorado Plateau and adjacent to the Grand Canyon, the areas' remarkable geology is characterized by exposed sedimentary rock and high, sometimes deeply incised, plateaus. The Mississippian-aged Redwall Limestone, known for the stunning red cliffs of the Grand Canyon itself, is present throughout the three landscapes and is the most abundant component of the Redwall-Muav aquifer. This aquifer overlaps with the southern portion of the Grand Canyon landscape, underneath the Coconino Plateau. Dissolution of the Redwall and associated Muav limestones has resulted in the formation of hundreds of karst features such as caves, caverns, and channels.

In the northeastern area, the Glen Canyon Group—a geologic formation composed of Navajo Sandstone, the Kayenta Formation, and the Moenave Formation—represents a continuation of the strikingly beautiful and significant geology found at the adjacent Vermilion Cliffs National Monument. The Kaibab Formation, another geologic formation that is prevalent throughout all three areas, forms most of the rim rock of the Grand Canyon and is responsible for additional significant cave and karst formations in these three regions as well as in Wupahcki National Monument and Grand Canyon National Park itself.

The Toroweap Fault crosses the northwestern area and is one of the most active faults in Arizona. Due to the relative prevalence of seismic activity, scientists have studied the area to better understand tectonism and faulting, the geologic history of the Colorado Plateau, and the hydrologic history of the Colorado River. Similarly, the Kanab Plateau, also in the northwestern area, has been important for studies of faulting and tectonism, stratigraphy and sediment deposition, and hydrology.

In the northeastern area, scientists have studied the House Rock Valley, known in the Southern Paiute language as Aesak, meaning “basket shaped,” to understand patterns of deposition and erosion. Stratigraphy—the study of rock layers—in this area has been important for developing a broader understanding of how the Grand Canyon formed.

In the southern area, the Coconino Plateau provides important opportunities to enhance understanding of tectonic uplift, canyon incision, and hydrological dynamics of regional aquifers. Over time, studies of the landscape's geology have also helped improve understanding of the geologic history of the Grand Canyon and Colorado Plateau as a whole. These studies have produced new theories regarding when and how the geologic structures in the area formed or eroded. Sites in this landscape have also been instrumental to long-term scientific studies of air pollution, airborne particulates, and visibility, as well as to studies on the use of satellite imagery to map geological formations. Paleontological resources are also found throughout the area, with fossils documented in written scientific literature for nearly 150 years. The Kanab Creek area in particular is known for brachiopod fossils that date back to the Carboniferous period.

The areas to the northeast, northwest, and south of the Grand Canyon are home to an abundant diversity of plant and animal species of scientific interest. Spanning a vast and unique range of geological and ecological systems, the areas showcase ecological transitions, ranging from the Mojave Desert and riparian habitats at low elevations; to Great Basin grassland, Great Basin woodland, and Great Basin desert scrubland at intermediate elevations; to Rocky Mountain subalpine conifer forests, subalpine grasslands, and montane conifer forests at higher elevations. Ponderosa pine stands, some with old growth characteristics, can also be found at higher elevations.

Riparian vegetation in the area is rare and precious in this largely arid region. The northwest area houses parts of Kanab Creek, a stream with largely intermittent flow that is home to native riparian plant species. The occasional perennial pools help to support the Kaibab National Forest's only cottonwood-willow riparian forest, an important habitat type in Arizona and the broader Southwest. Kanab Creek provides a habitat for federally

listed bird species, including potentially the threatened western yellow-billed cuckoo and endangered southwestern willow flycatcher, both of which have been sighted nearby. The creek also provides a habitat for sensitive amphibian species, including potentially the northern leopard frog.

In the grasslands found throughout the northwestern and southern areas, dominant vegetation species include native grasses, shrubs such as sagebrush and saltbush, and nearby juniper woodlands and savannas. The southern area is home to endemic and sensitive plant species, such as the Arizona leatherflower, Arizona phlox, Tusayan rabbitbrush, and Morton wild buckwheat. Grassland mammals, such as the pronghorn, and birds and raptors, such as the ferruginous hawk and the western burrowing owl, can also be found there.

Within the Great Basin desert-scrub habitat of the northwestern and northeastern areas, shrub species such as sagebrush and rabbitbrush grow alongside native grasses, wildflowers and other forbs, and occasionally cacti. This habitat type is home to unique mammal species including the Townsend's ground squirrel, the northern grasshopper mouse, and the more broadly distributed mule deer and bighorn sheep. Birds and reptiles characteristic of this community include the sage thrasher, sage sparrow, desert horned lizard, and Great Basin and Plateau tiger whiptails. The northeastern area also includes a portion of an important fall raptor migration route. The endangered Brady pincushion cactus and candidate species Paradine plains cactus, along with the sensitive Marble Canyon milkvetch and Paria Plateau fishhook cactus, can all be found in the northeastern area. The Siler pincushion cactus can be found in the far reaches of the northwestern area, particularly in the Moonshine Ridge and Johnson Springs Areas of Critical Environmental Concern.

Piñon and juniper woodlands are present at intermediate elevations and are particularly prevalent in the northwestern and southern areas. The piñon and juniper trees are accompanied by a sparse understory of native grasses and shrubs. This community is home to birds such as the pinyon jay and juniper titmouse. Along with characteristic reptiles and small mammals, this ecosystem also provides important winter range for elk and mule deer.

Petrar montane conifer forests are found at the highest elevations, primarily in the southern area. Ponderosa pine dominates these forests, but Douglas fir, white fir, Gambel oak, and other tree and brush species can also be found there. Several mammal species are dependent on ponderosa pine, including the Abert's squirrel. Bird species representative of this area include the northern goshawk, Merriam's turkey, and a variety of raptors and neotropical migratory songbirds. Elk and mountain lions are also found there.

The landscape is also home to other significant species of scientific interest. The endemic Grand Canyon ringlet butterfly and Tusayan rabbitbrush are present in the southern area, as may be the endangered and endemic Sentry milkvetch. The endangered Fickeisen plains cactus can be found in all three areas. The endemic Kaibab monkey grasshopper occasionally can be found along the eastern edge of the Kaibab uplift in the northeastern area. The endemic Grand Canyon rose, which has been identified as at risk by the BLM (termed BLM-sensitive), can be found in the northwestern area, the northeastern area, and potentially also the southern area.

The area provides an important habitat for many notable mammal species, including desert bighorn sheep, which frequent canyons in the area. Kanab Creek's Hack Canyon is one of two canyons where sheep were extirpated and reintroduced in the 1980s, and the population there is studied for its contributions to genetic diversity of the species and to enhance understanding of predation by mountain lions. Pronghorn, elk, bison, and mountain lions can be found on and around the area's plateaus, in addition to mule deer, which travel through the northwestern and northeastern areas as part of an important migratory corridor. The sensitive Allen's lappet-browed

bat, along with five other sensitive bat species, can be found in the north-eastern and northwestern areas, and possibly the southern area as well, and the endemic and sensitive House Rock Valley chisel-toothed kangaroo rat can be found in the northeastern area. The House Rock Wildlife Area, part of which falls within the northeastern area, contains a herd of bison that is an important contributor to the genetic diversity of bison populations across the United States. House Rock also provides a habitat for pronghorn and a winter range for mule deer.

Cliffs and rock outcrops throughout the landscapes are home to unique birds including peregrine falcons, bald eagles, golden eagles, and a reintroduced population of endangered California condors. The threatened Mexican spotted owl nests in the northwestern area. Over time, the area has been scientifically important for ecological studies of climate change, ecosystem ecology, vegetation communities, historical fire regimes, and bat ecology. The area also contains all or portions of five separate habitat linkages identified as important to wildlife habitat connectivity and threatened by development by the Arizona Wildlife Linkages Workgroup, a working group of public and private organizations and agencies in Arizona.

In addition to sustaining Indigenous peoples, vegetation, and wildlife since time immemorial, the northeastern, northwestern, and southern areas also have supported more recent Euro-American settlers. For example, visitors to the northwestern part of this area can trace the route taken by the 1776 Dominguez-Escalante expedition in search of a northern route between Santa Fe and Monterrey. Mormon settlers in the late 19th century developed the Honeymoon Trail in the northeastern area to travel between their homes in Arizona and the temple in St. George, Utah, following trails used by Tribal Nations to access sites such as Deer and House Rock Springs.

These settlers, along with early miners, loggers, and ranchers, left behind scattered remnants of their presence throughout the areas. Hull Cabin, built in 1889 by sheep ranchers within the southern area and near the South Rim of the Grand Canyon, is listed on the National Register of Historic Places. The cabin is currently maintained for visitors and memorializes the area's early ranching and early Forest Service administrative use of the area. The Emerald/Anita mine and associated Camp Anita, which briefly operated at the end of the 19th century, evidences Arizona's copper mining history, while the Apex Logging Camp contains evidence of the timber industry between 1928 and 1936 and is the focus of ongoing research by an archaeological field school. Located at the top of the steepest grade on the Grand Canyon Railroad line, the town of Apex was once the headquarters camp of the Saginaw and Manistee Lumber Company and provided wood that was used to build the railroad, timber the mines, and construct the resorts along the South Rim of the Grand Canyon. Remnants of these structures, such as the foundation of a one-room school house constructed from two converted box cars, building platforms, domestic trash scatters, and railroad beds can still be seen today and help tell the story of Apex and its outlying camps, which between 1928 and 1936 provided a home for lumberjacks and locomotive crews.

The southern area also includes three other noteworthy historic sites: The decommissioned Red Butte Airfield, which is listed on the National Register of Historic Places, operated in the 1920s to bring visitors, including celebrities like Amelia Earhart, Charles Lindbergh, and Will Rogers, to view the wonders of the Grand Canyon. The Grandview Lookout Tower and its two-room cabin, located near the South Rim of the Grand Canyon, were built by the Civilian Conservation Corps in 1936 to aid the Forest Service and the National Park Service in detecting wildland fires. And the Tusayan Ranger Station, which is also listed on the National Register of Historic Places, comprises six historic buildings constructed between 1939 and 1942, including a house, a barn, and a corral.

Protecting the areas to the northeast, northwest, and south of the Grand Canyon will preserve an important spiritual, cultural, prehistoric, and historic

legacy; maintain a diverse array of natural and scientific resources; and help ensure that the prehistoric, historic, and scientific value of the areas endures for the benefit of all Americans. As described above, the areas contain numerous objects of historic and scientific interest, and they provide exceptional outdoor recreational opportunities, including hiking, hunting, fishing, biking, horseback riding, backpacking, scenic driving, and wildlife-viewing, all of which are important to the travel- and tourism-based economy of the region.

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

WHEREAS, the landscapes of the areas to the northeast, northwest, and south of the Grand Canyon have been profoundly sacred to Tribal Nations and Indigenous peoples of the Southwest since time immemorial; and

WHEREAS, I find that the unique historic and scientific characteristics of the landscapes, and the collection of objects and resources therein, make the landscapes more than the mere sum of their parts, and thus the entire landscapes within the boundaries of each area reserved by this proclamation are themselves objects of historic and scientific interest in need of protection under section 320301 of title 54, United States Code; and

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

WHEREAS, I find that there are threats to the objects identified above, and, in the absence of a reservation under the Antiquities Act, these objects are not adequately protected by the current withdrawal, administrative designations, or otherwise applicable law because current protections do not require executive departments and agencies (agencies) to ensure the proper care and management of the objects and some objects fall outside of the boundaries of the current withdrawal; thus a national monument reserving the lands identified herein is necessary to protect the objects of historic and scientific interest identified above for current and future generations; and

WHEREAS, I find that the boundaries of the monument reserved by this proclamation represent the smallest area compatible with the proper care and management of the objects of scientific or historic interest identified above, as required by the Antiquities Act, including the landscapes within the boundaries of the three areas reserved and, independently, the collection of objects within those landscapes; and

WHEREAS, it is in the public interest to ensure the preservation, restoration, and protection of the objects of scientific and historic interest identified above, including the entire landscapes within the boundaries reserved by this proclamation;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands that are owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached

hereto and forms a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 917,618 acres. As a result of the distribution of the objects across the Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon areas, and additionally and independently, because the landscapes within each of the three monument areas are objects of scientific and historic interest in need of protection, the boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects of historic or scientific interest identified above.

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the Forest Service, other than by exchange that furthers the protective purposes of the monument; from location, entry, and patent under the mining laws; and from disposition under all laws relating to mineral and geothermal leasing.

This proclamation is subject to valid existing rights. If the Federal Government subsequently acquires any lands or interests in lands not currently owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects of the type identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

Nothing in this proclamation shall be construed to alter the valid existing water rights of any party, including the United States, or to alter or affect agreements governing the management and administration of the Colorado River, including any existing interstate water compact.

The Secretary of the Interior and the Secretary of Agriculture (Secretaries) shall manage the monument through the BLM and Forest Service, respectively, in accordance with the terms, conditions, and management direction provided by this proclamation. The Forest Service shall manage the portion of the monument within the boundaries of the National Forest System and the BLM shall manage the remainder of the monument. The lands administered by the Forest Service shall be managed as part of the Kaibab National Forest. The lands administered by the BLM shall be managed as a unit of the National Landscape Conservation System.

For purposes of protecting and restoring the objects identified above, the Secretaries shall jointly prepare a management plan for the monument and shall promulgate such rules and regulations for the management of the monument as they deem appropriate for those purposes. The Secretaries, through the BLM and Forest Service, shall consult with other Federal land management agencies or agency components in the local area, including the National Park Service, in developing the management plan. In promulgating any management rules and regulations governing National Forest System lands within the monument and developing the management plan, the Secretary of Agriculture, through the Forest Service, shall consult with the Secretary of the Interior, through the BLM.

The Secretaries shall provide for maximum public involvement in the development of the management plan, as well as consultation with federally recognized Tribal Nations and conferral with State and local governments. In preparing the management plan, the Secretaries shall take into account, to the maximum extent practicable, maintaining the undeveloped character of the lands within the monument; minimizing impacts from surface-disturbing activities; providing appropriate access for livestock grazing, recreation, hunting, fishing, dispersed camping, wildlife management, and scientific research; and emphasizing the retention of natural quiet, dark night skies and scenic attributes of the landscape. In the development and implementation of the management plan, the Secretaries shall maximize opportunities, pursuant to applicable legal authorities, for shared resources, operational

efficiency, and cooperation, and shall, to the maximum extent practicable, carefully incorporate the Indigenous Knowledge or special expertise offered by Tribal Nations and work with Tribal Nations to appropriately protect that knowledge.

The Secretaries shall explore opportunities for Tribal Nations to participate in co-stewardship of the monument; explore entering into cooperative agreements or, pursuant to the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 5301 *et seq.*, contracts with Tribes or Tribal organizations to perform administrative or management functions within the monument; and explore providing technical and financial assistance to improve the capacity of Tribal Nations to develop, enter into, and carry out activities under such cooperative agreements or contracts. The Secretaries shall further explore opportunities for funding agreements with Tribal Nations relating to the management and protection of traditional cultural properties and other culturally significant programming associated with the monument.

The Secretaries shall consider appropriate mechanisms to provide for temporary closures to the general public of specific portions of the monument to protect the privacy of cultural, religious, and gathering activities of members of Tribal Nations.

The Secretaries, through the BLM and Forest Service, shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.*, to provide information and advice regarding the development of the management plan and, as appropriate, management of the monument. The advisory committee shall consist of a fair and balanced representation of interested stakeholders, including the Arizona Game and Fish Department; other State agencies and local governments; Tribal Nations; recreational users; conservation organizations; wildlife, hunting, and fishing organizations; the scientific community; the ranching community; business owners; and the general public in the region.

In recognition of the importance of collaboration with Tribal Nations to the proper care and management of the objects identified above, and to ensure that management of the monument reflects tribal expertise and Indigenous Knowledge, a Baaj Nwaavjo I'tah Kukveni—Ancestral Footprints of the Grand Canyon Commission (Commission) is hereby established to provide guidance and recommendations on the development and implementation of the management plan and on the management of the monument. The Commission shall consist of one elected officer each from any Tribal Nation with ancestral ties to the area that has entered a cooperative agreement or similar arrangement with the Secretaries, through the BLM or Forest Service, in which the Tribal Nation and the Secretaries agree to co-stewardship of the monument through shared responsibilities or administration; has expressed, by Tribal resolution, an intention to join the Commission; and has designated an elected officer as the respective Tribe's representative. The Commission may adopt such procedures as it deems necessary to govern its activities, so that it may effectively partner with agencies by making continuing contributions to inform decisions regarding the management of the monument. The Secretaries shall explore opportunities to provide support to the Commission to enable participation in the planning and management of the monument.

The Secretaries shall meaningfully engage the Commission, or, should the Commission no longer exist, the relevant Tribal Nations through some other entity composed of one elected Tribal government officer from each of the Tribes represented on the Commission (comparable entity), in the development of the management plan and to inform the subsequent management of the monument. To that end, the Secretaries shall, in developing, revising, or amending the management plan, carefully and fully consider integrating the Indigenous Knowledge and special expertise of the members of the Commission or comparable entity. The management plan for the monument shall also set forth parameters for continued meaningful engagement with

the Commission or comparable entity in the implementation of the management plan.

Nothing in this proclamation shall be deemed to alter, modify, abrogate, enlarge, or diminish the rights or jurisdiction of any Tribal Nation. The Secretaries shall, to the maximum extent permitted by law and in consultation with Tribal Nations, ensure the protection of sacred sites and cultural properties and sites in the monument and shall provide access to Tribal members for traditional cultural, spiritual, and customary uses, consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996), the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), and the November 10, 2021, Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites. Such uses shall include, but are not limited to, the collection of medicines, berries, plants and other vegetation for cradle boards and other purposes, and firewood for ceremonial practices and personal noncommercial use, so long as each use is carried out in a manner consistent with the proper care and management of the objects identified above.

Nothing in this proclamation shall be construed to preclude the renewal or assignment of, or interfere with the operation, maintenance, replacement, modification, upgrade, or access to, existing or previously approved flood control, utility, pipeline, and telecommunications sites or facilities; roads or highway corridors; seismic monitoring facilities; wildlife management structures; or water infrastructure, including wildlife water developments or water district facilities, within the boundaries of existing or previously approved authorizations within the monument. Existing or previously approved flood control, utility, pipeline, telecommunications, and seismic monitoring facilities; roads or highway corridors; wildlife management structures; and water infrastructure, including wildlife water developments or water district facilities, may be expanded, and new facilities of such kind may be constructed, to the extent consistent with the proper care and management of the objects identified above and subject to the Secretaries' authorities, other applicable law, and the provisions of this proclamation related to roads and trails.

For purposes of protecting and restoring the objects identified above, the Secretaries shall prepare a transportation plan that designates the roads and trails on which motorized and non-motorized mechanized vehicle use, including mountain biking, will be allowed. The transportation plan shall include management decisions, including road closures and travel restrictions consistent with applicable law, necessary to protect the objects identified in this proclamation. Except for emergency purposes, authorized administrative purposes, wildlife management conducted by the Arizona Game and Fish Department, and the retrieval of legally harvested elk and bison, which are otherwise consistent with applicable law, motorized vehicle use in the monument may be permitted only on roads and trails documented as existing in BLM and Forest Service route inventories that exist as of the date of this proclamation. Any additional roads or trails designated for motorized vehicle use must be designated only for public safety needs or the protection of the objects identified above.

The Secretaries shall explore mechanisms, consistent with applicable law, to enable the protection of Indigenous Knowledge or other information relating to the nature and specific location of cultural resources within the monument and, to the extent practicable, shall explain any limitations on the ability to protect such information from disclosure before it is shared with agencies.

Nothing in this proclamation shall be deemed to prohibit grazing pursuant to existing leases or permits within the monument, or the renewal or assignment of such leases or permits, which the BLM and Forest Service shall continue to manage pursuant to their respective laws, regulations, and policies.

Nothing in this proclamation shall affect the BLM's or Forest Service's ability to authorize access to and remediation or monitoring of contaminated lands within the monument, including for remediation of mine, mill, or tailing sites, or for the restoration of natural resources.

Nothing in this proclamation shall preclude low-level overflights of military aircraft, flight testing or evaluation, the designation of new units of special use airspace, the use or establishment of military flight training routes, or low-level overflights and landings for wildlife management conducted by the Arizona Game and Fish Department over the lands reserved by this proclamation. Nothing in this proclamation shall preclude air or ground access to existing or new electronic tracking communications sites associated with special use airspace and military training routes.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction or authority of the State of Arizona with respect to fish and wildlife management, including hunting and fishing, on the lands reserved by this proclamation, or to affect the State's access to the monument for wildlife management, including access prior to and during the development of the management and transportation plans provided for above. The Secretaries shall seek to develop and implement science-based habitat and ecological restoration projects within the monument and shall seek to collaborate with the State of Arizona on wildlife management within the monument, including through the development of new, or the continuation of existing, memoranda of understanding with the Arizona Game and Fish Department.

The Secretaries may carry out vegetative management treatments within the monument to the extent consistent with the proper care and management of the objects identified above, with a focus on addressing ecological restoration; wildlife connectivity; or the risk of wildfire, insect infestation, invasive species, or disease that would endanger the objects identified in this proclamation or imperil public safety. Nothing in this proclamation shall be construed to alter the authority of any party with respect to the use of prescribed fire within the monument.

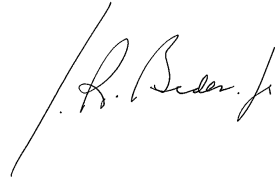
Nothing in this proclamation shall be construed to alter the authority or responsibility of any party with respect to emergency response activities within the monument, including wildland fire response.

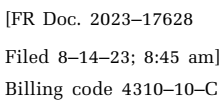
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of August, 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-eighth.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that serves as a signature line.



Rules and Regulations

Federal Register

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Tuesday, August 15, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. AMS-CN-23-0004]

Cotton Board Rules and Regulations: Adjusting Supplemental Assessment on Imports (2023 Amendments)

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Direct final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations, increasing the value assigned to imported cotton for the purposes of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. This amendment is required each year to ensure that assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is updating the Harmonized Tariff Schedule (HTS) statistical reporting numbers that were amended since the last assessment adjustment in 2022.

DATES: This direct final rule is effective October 16, 2023, without further action or notice, unless significant adverse comment is received by September 14, 2023. If significant adverse comment is received, AMS will publish a timely withdrawal of the amendment in the *Federal Register*.

ADDRESSES: Interested persons are invited to submit written comments concerning this direct final rule. Comments may be submitted by mail or hand delivery to Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406 or via the internet at: <https://www.regulations.gov>. All comments should reference the document number and the date and

page number of this issue of the *Federal Register*. All comments submitted in response to this direct final rule will be included in the record and will be made available to the public and can be viewed at: <https://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361-2726, facsimile (540) 361-1199, or email at CottonRP@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3909, November 28, 1990). These amendments contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program. These provisions provided for: (1) the assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior to the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17–26, 1991, and the amended Order was published in the *Federal Register* on December 10, 1991 (56 FR 64470). A proposed rule implementing the amended Order was published in the *Federal Register* on December 17, 1991 (56 FR 65450). Implementing rules were published on July 1 and 2, 1992 (57 FR 29181) and (57 FR 29431), respectively.

This direct final rule amends the value assigned to imported cotton in the Cotton Board Rules and Regulations (7 CFR 1205.510(b)(2)) that is used to determine the Cotton Research and Promotion assessment on imported cotton and cotton products. The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on

the weight of cotton imported—levied at a rate of \$1 per bale of cotton, which is equivalent to 500 pounds, or \$1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products—levied at a rate of five-tenths of one percent of the value of domestically produced cotton.

Section 1205.510(b)(2) of the Cotton Board Rules and Regulations provides for assigning the calendar year weighted average price received by U.S. farmers for Upland cotton to represent the value of imported cotton. This is so that the assessment on domestically produced cotton and the assessment on imported cotton and the cotton content of imported products is the same. The source for the average price statistic is *Agricultural Prices*, a publication of the National Agricultural Statistics Service (NASS) of the Department of Agriculture. Use of the weighted average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products will yield an assessment that is the same as assessments paid on domestically produced cotton.

The current value of imported cotton as published in 2022 in the *Federal Register* (87 FR 58711) for the purpose of calculating assessments on imported cotton is \$0.013215 per kilogram. Using the average weighted price received by U.S. farmers for Upland cotton for the calendar year 2022, this direct final rule amends the new value of imported cotton to \$0.014691 per kilogram to reflect the price received by U.S. farmers for Upland cotton during 2022.

An example of the complete assessment formula and how the figures are obtained is as follows:¹

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.

One Dollar per Bale Assessment Converted to Kilograms

A 500-pound bale equals 226.8 kg. (500 × 0.453597).

\$1 per bale assessment equals \$0.002000 per pound or 0.2000 cents

¹ Results are rounded for ease of presentation. Totals may not sum due to rounding.

per pound (1/500) or \$0.004409 per kg or 0.4409 cents per kg. (1/226.8).

Supplemental Assessment of 5/10 of One Percent of the Value of the Cotton Converted to Kilograms

The 2022 calendar year weighted average price received by producers for Upland cotton is \$0.933 per pound or \$2.056 per kg. (0.933×2.2046).

Five tenths of one percent of the average price equals \$0.010282 per kg. (2.056×0.005).

Total Assessment

The total assessment per kilogram of raw cotton is obtained by adding the \$1 per bale equivalent assessment of \$0.004409 per kg. and the supplemental assessment \$0.010282 per kg., which equals \$0.014691 per kg.

The current assessment on imported cotton is \$0.013215 per kilogram of imported cotton. The revised assessment in this direct final rule is \$0.014691, an increase of \$0.001476 per kilogram. This reflects the increase in the average weighted price of Upland cotton received by U.S. farmers during the period January through December 2022.

The Import Assessment Table in § 1205.510(b)(3) of the Order indicates the total assessment rate (\$ per kilogram) due for each Harmonized Tariff Schedule (HTS) number that is subject to assessment. This table must be revised each year to reflect changes in supplemental assessment rates and any changes to the HTS numbers. In this direct final rule, AMS is amending the Import Assessment Table.

AMS believes that these amendments are necessary to ensure that assessments collected on imported cotton and the cotton content of imported products are the same as those paid on domestically produced cotton. Accordingly, changes reflected in this rule should be adopted and implemented as soon as possible since it is required by regulation.

As described in this **Federal Register** document, the amendment to the value used to determine the Cotton Research and Promotion Program importer assessment will be updated to reflect the assessment already paid by U.S. farmers. For the reasons mentioned above, AMS finds that publishing a proposed rule and seeking public comment is unnecessary because the change is required annually by regulation in 7 CFR 1205.510.

Also, this direct-final rulemaking furthers the objectives of Executive Order 13563, which requires that the regulatory process “promote predictability and reduce uncertainty” and “identify and use the best, most

innovative, and least burdensome tools for achieving regulatory ends.”

AMS has used the direct rule rulemaking process since 2013 and has not received any adverse comments; however, if AMS receives significant adverse comments during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. AMS will then address public comments in a subsequent proposed rule and final rule based on the proposed rule.

B. Rulemaking Analyses

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court

of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the Secretary's ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR 121.201, a small cotton farming business as those having annual receipts of no more than \$3.25 million (North American Industry Classification System (NAICS) Code 111920) and small “Other Farm Product Raw Material Merchant Wholesalers” (cotton merchants/importers) (NAICS Code 424590) as having no more than 175 employees.

According to the NASS 2017 Agriculture Census, the number of cotton farms is 15,846. NASS also reports that the total U.S. production value averages \$5,993,255,333 for 2020–2022. Dividing the crop value by the number of cotton farms, the average crop value is approximately \$378,219. Since \$378,219 is well below \$3.25 million and assuming a normal distribution, the majority of cotton farmers are small according to the SBA standards.

The Cotton Board estimates approximately 40,000 importers are subject to the Cotton Research and Promotion Order. According to the United States Census Bureau's “2019 Survey of USB Annual Data Tables by Establishment Industry,” most importers are considered small entities as defined by the SBA (13 CFR 121.201). This rule would only affect importers of cotton and cotton-containing products and would increase the assessments paid by the importers under the Cotton Research and Promotion Order. The current assessment on imported cotton is \$0.013215 per kilogram of imported cotton. The amended assessment is \$0.014691, which was calculated based on the 12-month weighted average of price received by U.S. cotton farmers in 2022. Section 1205.510 of the Order, “Levy of assessments”, provides “The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States.” In addition, § 1205.510

provides that the 12-month weighted average of prices received by U.S. farmers will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton. Under the Cotton Research and Promotion Program, assessments are used by the Cotton Board to finance research and promotion programs designed to increase consumer demand for Upland cotton in the United States and international markets. In 2022, producer assessments totaled \$52.6 million and importer assessments totaled \$44.6 million. According to the Cotton Board, should the volume of cotton products imported into the U.S. remain at the same level in 2023, one could expect an increase of assessments by approximately \$4,984,487.

Imported organic cotton and products may be exempt from assessment if eligible under § 1205.519 of the Order.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581-0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

A 30-day comment period is provided to comment on the changes to the Cotton Board Rules and Regulations herein. This period is deemed appropriate because an amendment is required to adjust the assessments collected on imported cotton and the cotton content of imported products to be the same as those paid on domestically produced cotton.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, AMS amends 7 CFR part 1205 as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118; 7 U.S.C. 7401.

■ 2. In § 1205.510, paragraph (b)(2) and the table in paragraph (b)(3) are revised to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is \$1.4691 cents per kilogram.

(3) * * *

TABLE 2 TO PARAGRAPH (b)(3)—
IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5007106010	0.2713	0.3986
5007106020	0.2713	0.3986
5007906010	0.2713	0.3986
5007906020	0.2713	0.3986
5112904000	0.1085	0.1594
5112905000	0.1085	0.1594
5112909010	0.1085	0.1594
5112909090	0.1085	0.1594
5201000500	1	1.4691
5201001200	1	1.4691
5201001400	1	1.4691
5201001800	1	1.4691
5201002200	1	1.4691
5201002400	1	1.4691
5201002800	1	1.4691
5201003400	1	1.4691
5201003800	1	1.4691
5204110000	1.0526	1.5464
5204190000	0.6316	0.9279
5204200000	1.0526	1.5464
5205111000	1	1.4691
5205112000	1	1.4691
5205121000	1	1.4691
5205122000	1	1.4691
5205131000	1	1.4691
5205132000	1	1.4691
5205141000	1	1.4691
5205142000	1	1.4691
5205151000	1	1.4691
5205152000	1	1.4691
5205210020	1.044	1.5337
5205210090	1.044	1.5337
5205220020	1.044	1.5337
5205220090	1.044	1.5337
5205230020	1.044	1.5337
5205230090	1.044	1.5337
5205240020	1.044	1.5337
5205240090	1.044	1.5337
5205260020	1.044	1.5337
5205260090	1.044	1.5337
5205270020	1.044	1.5337
5205270090	1.044	1.5337
5205280020	1.044	1.5337
5205280090	1.044	1.5337
5205310000	1	1.4691
5205320000	1	1.4691
5205330000	1	1.4691
5205340000	1	1.4691

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5205350000	1	1.4691
5205410020	1.044	1.5337
5205410090	1.044	1.5337
5205420021	1.044	1.5337
5205420029	1.044	1.5337
5205420090	1.044	1.5337
5205430021	1.044	1.5337
5205430029	1.044	1.5337
5205430090	1.044	1.5337
5205440021	1.044	1.5337
5205440029	1.044	1.5337
5205440090	1.044	1.5337
5205460021	1.044	1.5337
5205460029	1.044	1.5337
5205460090	1.044	1.5337
5205470021	1.044	1.5337
5205470029	1.044	1.5337
5205470090	1.044	1.5337
5205480020	1.044	1.5337
5205480090	1.044	1.5337
5206110000	0.7368	1.0824
5206120000	0.7368	1.0824
5206130000	0.7368	1.0824
5206140000	0.7368	1.0824
5206150000	0.7368	1.0824
5206210000	0.7692	1.1300
5206220000	0.7692	1.1300
5206230000	0.7692	1.1300
5206240000	0.7692	1.1300
5206250000	0.7692	1.1300
5206310000	0.7368	1.0824
5206320000	0.7368	1.0824
5206330000	0.7368	1.0824
5206340000	0.7368	1.0824
5206350000	0.7368	1.0824
5206410000	0.7692	1.1300
5206420000	0.7692	1.1300
5206430000	0.7692	1.1300
5206440000	0.7692	1.1300
5206450000	0.7692	1.1300
5207100000	0.9474	1.3918
5207900000	0.6316	0.9279
5208112020	1.0852	1.5943
5208112040	1.0852	1.5943
5208112090	1.0852	1.5943
5208114020	1.0852	1.5943
5208114040	1.0852	1.5943
5208114060	1.0852	1.5943
5208114090	1.0852	1.5943
5208116000	1.0852	1.5943
5208118020	1.0852	1.5943
5208118090	1.0852	1.5943
5208124020	1.0852	1.5943
5208124040	1.0852	1.5943
5208124090	1.0852	1.5943
5208126020	1.0852	1.5943
5208126040	1.0852	1.5943
5208126060	1.0852	1.5943
5208126090	1.0852	1.5943
5208128020	1.0852	1.5943
5208128090	1.0852	1.5943
5208130000	1.0852	1.5943
5208192020	1.0852	1.5943
5208192090	1.0852	1.5943
5208194020	1.0852	1.5943
5208194090	1.0852	1.5943
5208196020	1.0852	1.5943
5208196090	1.0852	1.5943

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5208198020	1.0852	1.5943
5208198090	1.0852	1.5943
5208212020	1.0852	1.5943
5208212040	1.0852	1.5943
5208212090	1.0852	1.5943
5208214020	1.0852	1.5943
5208214040	1.0852	1.5943
5208214060	1.0852	1.5943
5208214090	1.0852	1.5943
5208216020	1.0852	1.5943
5208216090	1.0852	1.5943
5208224020	1.0852	1.5943
5208224040	1.0852	1.5943
5208224090	1.0852	1.5943
5208226020	1.0852	1.5943
5208226040	1.0852	1.5943
5208226060	1.0852	1.5943
5208226090	1.0852	1.5943
5208228020	1.0852	1.5943
5208228090	1.0852	1.5943
5208230000	1.0852	1.5943
5208292020	1.0852	1.5943
5208292090	1.0852	1.5943
5208294020	1.0852	1.5943
5208294090	1.0852	1.5943
5208296020	1.0852	1.5943
5208296090	1.0852	1.5943
5208298020	1.0852	1.5943
5208298090	1.0852	1.5943
5208312000	1.0852	1.5943
5208314020	1.0852	1.5943
5208314040	1.0852	1.5943
5208314090	1.0852	1.5943
5208316020	1.0852	1.5943
5208316040	1.0852	1.5943
5208316060	1.0852	1.5943
5208316090	1.0852	1.5943
5208318020	1.0852	1.5943
5208318090	1.0852	1.5943
5208321000	1.0852	1.5943
5208323020	1.0852	1.5943
5208323040	1.0852	1.5943
5208323090	1.0852	1.5943
5208324020	1.0852	1.5943
5208324040	1.0852	1.5943
5208324060	1.0852	1.5943
5208324090	1.0852	1.5943
5208325020	1.0852	1.5943
5208325090	1.0852	1.5943
5208330000	1.0852	1.5943
5208392020	1.0852	1.5943
5208392090	1.0852	1.5943
5208394020	1.0852	1.5943
5208394090	1.0852	1.5943
5208396020	1.0852	1.5943
5208396090	1.0852	1.5943
5208398020	1.0852	1.5943
5208398090	1.0852	1.5943
5208412000	1.0852	1.5943
5208414000	1.0852	1.5943
5208416000	1.0852	1.5943
5208418000	1.0852	1.5943
5208421000	1.0852	1.5943
5208423000	1.0852	1.5943
5208424000	1.0852	1.5943
5208425000	1.0852	1.5943
5208430000	1.0852	1.5943
5208492000	1.0852	1.5943

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5208494010	1.0852	1.5943
5208494020	1.0852	1.5943
5208494090	1.0852	1.5943
5208496010	1.0852	1.5943
5208496020	1.0852	1.5943
5208496030	1.0852	1.5943
5208496090	1.0852	1.5943
5208498020	1.0852	1.5943
5208498090	1.0852	1.5943
5208512000	1.0852	1.5943
5208514020	1.0852	1.5943
5208514040	1.0852	1.5943
5208514090	1.0852	1.5943
5208516020	1.0852	1.5943
5208516040	1.0852	1.5943
5208516060	1.0852	1.5943
5208516090	1.0852	1.5943
5208518020	1.0852	1.5943
5208518090	1.0852	1.5943
5208521000	1.0852	1.5943
5208523020	1.0852	1.5943
5208523035	1.0852	1.5943
5208523045	1.0852	1.5943
5208523090	1.0852	1.5943
5208524020	1.0852	1.5943
5208524035	1.0852	1.5943
5208524045	1.0852	1.5943
5208524055	1.0852	1.5943
5208524065	1.0852	1.5943
5208524090	1.0852	1.5943
5208525020	1.0852	1.5943
5208525090	1.0852	1.5943
5208591000	1.0852	1.5943
5208592015	1.0852	1.5943
5208592025	1.0852	1.5943
5208592085	1.0852	1.5943
5208592095	1.0852	1.5943
5208594020	1.0852	1.5943
5208594090	1.0852	1.5943
5208596020	1.0852	1.5943
5208596090	1.0852	1.5943
5208598020	1.0852	1.5943
5208598090	1.0852	1.5943
5209110020	1.0309	1.5145
5209110025	1.0309	1.5145
5209110035	1.0309	1.5145
5209110050	1.0309	1.5145
5209110090	1.0309	1.5145
5209120020	1.0309	1.5145
5209120040	1.0309	1.5145
5209190020	1.0309	1.5145
5209190040	1.0309	1.5145
5209190060	1.0309	1.5145
5209190090	1.0309	1.5145
5209210020	1.0309	1.5145
5209210025	1.0309	1.5145
5209210035	1.0309	1.5145
5209210050	1.0309	1.5145
5209210090	1.0309	1.5145
5209220020	1.0309	1.5145
5209220040	1.0309	1.5145
5209290020	1.0309	1.5145
5209290040	1.0309	1.5145
5209290060	1.0309	1.5145
5209290090	1.0309	1.5145
5209313000	1.0309	1.5145
5209316020	1.0309	1.5145
5209316025	1.0309	1.5145

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5209316035	1.0309	1.5145
5209316050	1.0309	1.5145
5209316090	1.0309	1.5145
5209320020	1.0309	1.5145
5209320040	1.0309	1.5145
5209390020	1.0309	1.5145
5209390040	1.0309	1.5145
5209390060	1.0309	1.5145
5209390080	1.0309	1.5145
5209390090	1.0309	1.5145
5209413000	1.0309	1.5145
5209416020	1.0309	1.5145
5209416040	1.0309	1.5145
5209420020	0.9767	1.4349
5209420040	0.9767	1.4349
5209420060	0.9767	1.4349
5209420080	0.9767	1.4349
5209430030	1.0309	1.5145
5209430050	1.0309	1.5145
5209490020	1.0309	1.5145
5209490040	1.0309	1.5145
5209490090	1.0309	1.5145
5209513000	1.0309	1.5145
5209516015	1.0852	1.5943
5209516025	1.0852	1.5943
5209516032	1.0852	1.5943
5209516035	1.0852	1.5943
5209516050	1.0852	1.5943
5209516090	1.0852	1.5943
5209520020	1.0852	1.5943
5209520040	1.0852	1.5943
5209590015	1.0852	1.5943
5209590025	1.0852	1.5943
5209590040	1.0852	1.5943
5209590060	1.0852	1.5943
5209590090	1.0852	1.5943
5210114020	0.6511	0.9565
5210114040	0.6511	0.9565
5210114090	0.6511	0.9565
5210116020	0.6511	0.9565
5210116040	0.6511	0.9565
5210116060	0.6511	0.9565
5210116090	0.6511	0.9565
5210118020	0.6511	0.9565
5210118090	0.6511	0.9565
5210191000	0.6511	0.9565
5210192020	0.6511	0.9565
5210192090	0.6511	0.9565
5210194020	0.6511	0.9565
5210194090	0.6511	0.9565
5210196020	0.6511	0.9565
5210196090	0.6511	0.9565
5210198020	0.6511	0.9565
5210198090	0.6511	0.9565
5210214020	0.6511	0.9565
5210214040	0.6511	0.9565
5210214090	0.6511	0.9565
5210216020	0.6511	0.9565
5210216040	0.6511	0.9565
5210216060	0.6511	0.9565
5210216090	0.6511	0.9565
5210218020	0.6511	0.9565
5210218090	0.6511	0.9565
5210291000	0.6511	0.9565
5210292020	0.6511	0.9565
5210292090	0.6511	0.9565
5210294020	0.6511	0.9565
5210294090	0.6511	0.9565

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5210296020	0.6511	0.9565
5210296090	0.6511	0.9565
5210298020	0.6511	0.9565
5210298090	0.6511	0.9565
5210314020	0.6511	0.9565
5210314040	0.6511	0.9565
5210314090	0.6511	0.9565
5210316020	0.6511	0.9565
5210316040	0.6511	0.9565
5210316060	0.6511	0.9565
5210316090	0.6511	0.9565
5210318020	0.6511	0.9565
5210318090	0.6511	0.9565
5210320000	0.6511	0.9565
5210392020	0.6511	0.9565
5210392090	0.6511	0.9565
5210394020	0.6511	0.9565
5210394090	0.6511	0.9565
5210396020	0.6511	0.9565
5210396090	0.6511	0.9565
5210398020	0.6511	0.9565
5210398090	0.6511	0.9565
5210414000	0.6511	0.9565
5210416000	0.6511	0.9565
5210418000	0.6511	0.9565
5210491000	0.6511	0.9565
5210492000	0.6511	0.9565
5210494010	0.6511	0.9565
5210494020	0.6511	0.9565
5210494090	0.6511	0.9565
5210496010	0.6511	0.9565
5210496020	0.6511	0.9565
5210496090	0.6511	0.9565
5210498020	0.6511	0.9565
5210498090	0.6511	0.9565
5210514020	0.6511	0.9565
5210514040	0.6511	0.9565
5210514090	0.6511	0.9565
5210516020	0.6511	0.9565
5210516040	0.6511	0.9565
5210516060	0.6511	0.9565
5210516090	0.6511	0.9565
5210518020	0.6511	0.9565
5210518090	0.6511	0.9565
5210591000	0.6511	0.9565
5210592020	0.6511	0.9565
5210592090	0.6511	0.9565
5210594020	0.6511	0.9565
5210594090	0.6511	0.9565
5210596020	0.6511	0.9565
5210596090	0.6511	0.9565
5210598020	0.6511	0.9565
5210598090	0.6511	0.9565
5211110020	0.6511	0.9565
5211110025	0.6511	0.9565
5211110035	0.6511	0.9565
5211110050	0.6511	0.9565
5211110090	0.6511	0.9565
5211120020	0.6511	0.9565
5211120040	0.6511	0.9565
5211190020	0.6511	0.9565
5211190040	0.6511	0.9565
5211190060	0.6511	0.9565
5211190090	0.6511	0.9565
5211202120	0.6511	0.9565
5211202125	0.6511	0.9565
5211202135	0.6511	0.9565
5211202150	0.6511	0.9565

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5211202190	0.6511	0.9565
5211202220	0.6511	0.9565
5211202240	0.6511	0.9565
5211202920	0.6511	0.9565
5211202940	0.6511	0.9565
5211202960	0.6511	0.9565
5211202990	0.6511	0.9565
5211310020	0.6511	0.9565
5211310025	0.6511	0.9565
5211310035	0.6511	0.9565
5211310050	0.6511	0.9565
5211310090	0.6511	0.9565
5211320020	0.6511	0.9565
5211320040	0.6511	0.9565
5211390020	0.6511	0.9565
5211390040	0.6511	0.9565
5211390060	0.6511	0.9565
5211390090	0.6511	0.9565
5211410020	0.6511	0.9565
5211410040	0.6511	0.9565
5211420020	0.7054	1.0363
5211420040	0.7054	1.0363
5211420060	0.6511	0.9565
5211420080	0.6511	0.9565
5211430030	0.6511	0.9565
5211430050	0.6511	0.9565
5211490020	0.6511	0.9565
5211490090	0.6511	0.9565
5211510020	0.6511	0.9565
5211510030	0.6511	0.9565
5211510050	0.6511	0.9565
5211510090	0.6511	0.9565
5211520020	0.6511	0.9565
5211520040	0.6511	0.9565
5211590015	0.6511	0.9565
5211590025	0.6511	0.9565
5211590040	0.6511	0.9565
5211590060	0.6511	0.9565
5211590090	0.6511	0.9565
5212111010	0.5845	0.8587
5212111020	0.6231	0.9154
5212116010	0.8681	1.2753
5212116020	0.8681	1.2753
5212116030	0.8681	1.2753
5212116040	0.8681	1.2753
5212116050	0.8681	1.2753
5212116070	0.8681	1.2753
5212116080	0.8681	1.2753
5212116090	0.8681	1.2753
5212121010	0.5845	0.8587
5212121020	0.6231	0.9154
5212126010	0.8681	1.2753
5212126020	0.8681	1.2753
5212126030	0.8681	1.2753
5212126040	0.8681	1.2753
5212126050	0.8681	1.2753
5212126060	0.8681	1.2753
5212126070	0.8681	1.2753
5212126080	0.8681	1.2753
5212126090	0.8681	1.2753
5212131010	0.5845	0.8587
5212131020	0.6231	0.9154
5212136010	0.8681	1.2753
5212136020	0.8681	1.2753
5212136030	0.8681	1.2753
5212136040	0.8681	1.2753
5212136050	0.8681	1.2753

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5212136060	0.8681	1.2753
5212136070	0.8681	1.2753
5212136080	0.8681	1.2753
5212136090	0.8681	1.2753
5212141010	0.5845	0.8587
5212141020	0.6231	0.9154
5212146010	0.8681	1.2753
5212146020	0.8681	1.2753
5212146030	0.8681	1.2753
5212146090	0.8681	1.2753
5212151010	0.5845	0.8587
5212151020	0.6231	0.9154
5212156010	0.8681	1.2753
5212156020	0.8681	1.2753
5212156030	0.8681	1.2753
5212156040	0.8681	1.2753
5212156050	0.8681	1.2753
5212156060	0.8681	1.2753
5212156070	0.8681	1.2753
5212156080	0.8681	1.2753
5212156090	0.8681	1.2753
5212211010	0.5845	0.8587
5212211020	0.6231	0.9154
5212216010	0.8681	1.2753
5212216020	0.8681	1.2753
5212216030	0.8681	1.2753
5212216040	0.8681	1.2753
5212216050	0.8681	1.2753
5212216060	0.8681	1.2753
5212216090	0.8681	1.2753
5212221010	0.5845	0.8587
5212221020	0.6231	0.9154
5212226010	0.8681	1.2753
5212226020	0.8681	1.2753
5212226030	0.8681	1.2753
5212226040	0.8681	1.2753
5212226050	0.8681	1.2753
5212226060	0.8681	1.2753
5212226090	0.8681	1.2753
5212231010	0.5845	0.8587
5212231020	0.6231	0.9154
5212236010	0.8681	1.2753
5212236020	0.8681	1.2753
5212236030	0.8681	1.2753
5212236040	0.8681	1.2753
5212236050	0.8681	1.2753
5212236060	0.8681	1.2753
5212236090	0.8681	1.2753
5212241010	0.5845	0.8587
5212241020	0.6231	0.9154
5212246010	0.8681	1.2753
5212246020	0.7054	1.0363
5212246030	0.8681	1.2753
5212246040	0.8681	1.2753
5212246090	0.8681	1.2753
5212251010	0.5845	0.8587
5212251020	0.6231	0.9154
5212256010	0.8681	1.2753
5212256020	0.8681	1.2753
5212256030	0.8681	1.2753
5212256040	0.8681	1.2753
5212256050	0.8681	1.2753
5212256060	0.8681	1.2753
5212256090	0.8681	1.2753
5309213005	0.5426	0.7971
5309213010	0.5426	0.7971
5309213015	0.5426	0.7971
5309213020	0.5426	0.7971

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5309214010	0.2713	0.3986
5309214090	0.2713	0.3986
5309293005	0.5426	0.7971
5309293010	0.5426	0.7971
5309293015	0.5426	0.7971
5309293020	0.5426	0.7971
5309294010	0.2713	0.3986
5309294090	0.2713	0.3986
5311003005	0.5426	0.7971
5311003010	0.5426	0.7971
5311003015	0.5426	0.7971
5311003020	0.5426	0.7971
5407810010	0.5426	0.7971
5407810020	0.5426	0.7971
5407810030	0.5426	0.7971
5407810040	0.5426	0.7971
5407810090	0.5426	0.7971
5407820010	0.5426	0.7971
5407820020	0.5426	0.7971
5407820030	0.5426	0.7971
5407820040	0.5426	0.7971
5407820090	0.5426	0.7971
5407830010	0.5426	0.7971
5407830020	0.5426	0.7971
5407830030	0.5426	0.7971
5407830040	0.5426	0.7971
5407830090	0.5426	0.7971
5407840010	0.5426	0.7971
5407840020	0.5426	0.7971
5407840030	0.5426	0.7971
5407840040	0.5426	0.7971
5407840090	0.5426	0.7971
5509210000	0.1053	0.1547
5509220010	0.1053	0.1547
5509220090	0.1053	0.1547
5509530030	0.3158	0.4639
5509530060	0.3158	0.4639
5509620000	0.5263	0.7732
5509920000	0.5263	0.7732
5510300000	0.3684	0.5412
5511200000	0.3158	0.4639
5512110010	0.1085	0.1594
5512110022	0.1085	0.1594
5512110027	0.1085	0.1594
5512110030	0.1085	0.1594
5512110040	0.1085	0.1594
5512110050	0.1085	0.1594
5512110060	0.1085	0.1594
5512110070	0.1085	0.1594
5512110090	0.1085	0.1594
5512190005	0.1085	0.1594
5512190010	0.1085	0.1594
5512190015	0.1085	0.1594
5512190022	0.1085	0.1594
5512190027	0.1085	0.1594
5512190030	0.1085	0.1594
5512190035	0.1085	0.1594
5512190040	0.1085	0.1594
5512190045	0.1085	0.1594
5512190050	0.1085	0.1594
5512190090	0.1085	0.1594
5512210010	0.0326	0.0479
5512210020	0.0326	0.0479
5512210030	0.0326	0.0479
5512210040	0.0326	0.0479
5512210060	0.0326	0.0479
5512210070	0.0326	0.0479
5512210090	0.0326	0.0479

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5512290010	0.217	0.3188
5512910010	0.0543	0.0798
5512990005	0.0543	0.0798
5512990010	0.0543	0.0798
5512990015	0.0543	0.0798
5512990020	0.0543	0.0798
5512990025	0.0543	0.0798
5512990030	0.0543	0.0798
5512990035	0.0543	0.0798
5512990040	0.0543	0.0798
5512990045	0.0543	0.0798
5512990090	0.0543	0.0798
5513110020	0.3581	0.5261
5513110040	0.3581	0.5261
5513110060	0.3581	0.5261
5513110090	0.3581	0.5261
5513120000	0.3581	0.5261
5513130020	0.3581	0.5261
5513130040	0.3581	0.5261
5513130090	0.3581	0.5261
5513190010	0.3581	0.5261
5513190020	0.3581	0.5261
5513190030	0.3581	0.5261
5513190040	0.3581	0.5261
5513190050	0.3581	0.5261
5513190060	0.3581	0.5261
5513190090	0.3581	0.5261
5513210020	0.3581	0.5261
5513210040	0.3581	0.5261
5513210060	0.3581	0.5261
5513210090	0.3581	0.5261
5513230121	0.3581	0.5261
5513230141	0.3581	0.5261
5513230191	0.3581	0.5261
5513290010	0.3581	0.5261
5513290020	0.3581	0.5261
5513290030	0.3581	0.5261
5513290040	0.3581	0.5261
5513290050	0.3581	0.5261
5513290060	0.3581	0.5261
5513290090	0.3581	0.5261
5513310000	0.3581	0.5261
5513390111	0.3581	0.5261
5513390115	0.3581	0.5261
5513390191	0.3581	0.5261
5513410020	0.3581	0.5261
5513410040	0.3581	0.5261
5513410060	0.3581	0.5261
5513410090	0.3581	0.5261
5513491000	0.3581	0.5261
5513492020	0.3581	0.5261
5513492040	0.3581	0.5261
5513492090	0.3581	0.5261
5513499010	0.3581	0.5261
5513499020	0.3581	0.5261
5513499030	0.3581	0.5261
5513499040	0.3581	0.5261
5513499050	0.3581	0.5261
5513499060	0.3581	0.5261
5513499090	0.3581	0.5261
5514110020	0.4341	0.6377
5514110030	0.4341	0.6377
5514110050	0.4341	0.6377
5514110090	0.4341	0.6377
5514120020	0.4341	0.6377
5514120040	0.4341	0.6377
5514191020	0.4341	0.6377
5514191040	0.4341	0.6377

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5514191090	0.4341	0.6377
5514199010	0.4341	0.6377
5514199020	0.4341	0.6377
5514199030	0.4341	0.6377
5514199040	0.4341	0.6377
5514199090	0.4341	0.6377
5514210020	0.4341	0.6377
5514210030	0.4341	0.6377
5514210050	0.4341	0.6377
5514210090	0.4341	0.6377
5514220020	0.4341	0.6377
5514220040	0.4341	0.6377
5514230020	0.4341	0.6377
5514230040	0.4341	0.6377
5514230090	0.4341	0.6377
5514290010	0.4341	0.6377
5514290020	0.4341	0.6377
5514290030	0.4341	0.6377
5514290040	0.4341	0.6377
5514290090	0.4341	0.6377
5514303100	0.4341	0.6377
5514303210	0.4341	0.6377
5514303215	0.4341	0.6377
5514303280	0.4341	0.6377
5514303310	0.4341	0.6377
5514303390	0.4341	0.6377
5514303910	0.4341	0.6377
5514303920	0.4341	0.6377
5514303990	0.4341	0.6377
5514410020	0.4341	0.6377
5514410030	0.4341	0.6377
5514410050	0.4341	0.6377
5514410090	0.4341	0.6377
5514420020	0.4341	0.6377
5514420040	0.4341	0.6377
5514430020	0.4341	0.6377
5514430040	0.4341	0.6377
5514430090	0.4341	0.6377
5514490010	0.4341	0.6377
5514490020	0.4341	0.6377
5514490030	0.4341	0.6377
5514490040	0.4341	0.6377
5514490090	0.4341	0.6377
5515110005	0.1085	0.1594
5515110010	0.1085	0.1594
5515110015	0.1085	0.1594
5515110020	0.1085	0.1594
5515110025	0.1085	0.1594
5515110030	0.1085	0.1594
5515110035	0.1085	0.1594
5515110040	0.1085	0.1594
5515110045	0.1085	0.1594
5515110090	0.1085	0.1594
5515120010	0.1085	0.1594
5515120022	0.1085	0.1594
5515120027	0.1085	0.1594
5515120030	0.1085	0.1594
5515120040	0.1085	0.1594
5515120090	0.1085	0.1594
5515190005	0.1085	0.1594
5515190010	0.1085	0.1594
5515190015	0.1085	0.1594
5515190020	0.1085	0.1594
5515190025	0.1085	0.1594
5515190030	0.1085	0.1594
5515190035	0.1085	0.1594
5515190040	0.1085	0.1594
5515190045	0.1085	0.1594

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5515190090	0.1085	0.1594
5515290005	0.1085	0.1594
5515290010	0.1085	0.1594
5515290015	0.1085	0.1594
5515290020	0.1085	0.1594
5515290025	0.1085	0.1594
5515290030	0.1085	0.1594
5515290035	0.1085	0.1594
5515290040	0.1085	0.1594
5515290045	0.1085	0.1594
5515290090	0.1085	0.1594
5515999005	0.1085	0.1594
5515999010	0.1085	0.1594
5515999015	0.1085	0.1594
5515999020	0.1085	0.1594
5515999025	0.1085	0.1594
5515999030	0.1085	0.1594
5515999035	0.1085	0.1594
5515999040	0.1085	0.1594
5515999045	0.1085	0.1594
5515999090	0.1085	0.1594
5516210010	0.1085	0.1594
5516210020	0.1085	0.1594
5516210030	0.1085	0.1594
5516210040	0.1085	0.1594
5516210090	0.1085	0.1594
5516220010	0.1085	0.1594
5516220020	0.1085	0.1594
5516220030	0.1085	0.1594
5516220040	0.1085	0.1594
5516220090	0.1085	0.1594
5516230010	0.1085	0.1594
5516230020	0.1085	0.1594
5516230030	0.1085	0.1594
5516230040	0.1085	0.1594
5516230090	0.1085	0.1594
5516240010	0.1085	0.1594
5516240020	0.1085	0.1594
5516240030	0.1085	0.1594
5516240040	0.1085	0.1594
5516240085	0.1085	0.1594
5516240095	0.1085	0.1594
5516410010	0.3798	0.5580
5516410022	0.3798	0.5580
5516410027	0.3798	0.5580
5516410030	0.3798	0.5580
5516410040	0.3798	0.5580
5516410050	0.3798	0.5580
5516410060	0.3798	0.5580
5516410070	0.3798	0.5580
5516410090	0.3798	0.5580
5516420010	0.3798	0.5580
5516420022	0.3798	0.5580
5516420027	0.3798	0.5580
5516420030	0.3798	0.5580
5516420040	0.3798	0.5580
5516420050	0.3798	0.5580
5516420060	0.3798	0.5580
5516420070	0.3798	0.5580
5516420090	0.3798	0.5580
5516430010	0.217	0.3188
5516430015	0.3798	0.5580
5516430020	0.3798	0.5580
5516430035	0.3798	0.5580
5516430080	0.3798	0.5580
5516440010	0.3798	0.5580
5516440022	0.3798	0.5580
5516440027	0.3798	0.5580

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5516440030	0.3798	0.5580
5516440040	0.3798	0.5580
5516440050	0.3798	0.5580
5516440060	0.3798	0.5580
5516440070	0.3798	0.5580
5516440090	0.3798	0.5580
5516910010	0.0543	0.0798
5516910020	0.0543	0.0798
5516910030	0.0543	0.0798
5516910040	0.0543	0.0798
5516910050	0.0543	0.0798
5516910060	0.0543	0.0798
5516910070	0.0543	0.0798
5516910090	0.0543	0.0798
5516920010	0.0543	0.0798
5516920020	0.0543	0.0798
5516920030	0.0543	0.0798
5516920040	0.0543	0.0798
5516920050	0.0543	0.0798
5516920060	0.0543	0.0798
5516920070	0.0543	0.0798
5516920090	0.0543	0.0798
5516930010	0.0543	0.0798
5516930020	0.0543	0.0798
5516930090	0.0543	0.0798
5516940010	0.0543	0.0798
5516940020	0.0543	0.0798
5516940030	0.0543	0.0798
5516940040	0.0543	0.0798
5516940050	0.0543	0.0798
5516940060	0.0543	0.0798
5516940070	0.0543	0.0798
5516940090	0.0543	0.0798
5601210010	0.9767	1.4349
5601210090	0.9767	1.4349
5601220010	0.1085	0.1594
5601220050	0.1085	0.1594
5601220091	0.1085	0.1594
5601300000	0.3256	0.4783
5602101000	0.0543	0.0798
5602109090	0.4341	0.6377
5602290000	0.4341	0.6377
5602909000	0.3256	0.4783
5603143000	0.2713	0.3986
5603910010	0.0217	0.0319
5603910090	0.0651	0.0956
5603920010	0.0217	0.0319
5603920070	0.0651	0.0956
5603920095	0.0651	0.0956
5603930010	0.0217	0.0319
5603930090	0.0651	0.0956
5603941090	0.3256	0.4783
5603943000	0.1628	0.2392
5603949010	0.0326	0.0479
5604100000	0.2632	0.3867
5604909000	0.2105	0.3092
5605009000	0.1579	0.2320
5606000010	0.1263	0.1855
5606000090	0.1263	0.1855
5607502500	0.1684	0.2474
5607909000	0.8421	1.2371
5608901000	1.0526	1.5464
5608902300	0.6316	0.9279
5608902700	0.6316	0.9279
5608903000	0.3158	0.4639
5609001000	0.8421	1.2371
5609004000	0.2105	0.3092
5701101300	0.0526	0.0773

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5701101600	0.0526	0.0773
5701104000	0.0526	0.0773
5701109000	0.0526	0.0773
5701901010	1	1.4691
5701901020	1	1.4691
5701901030	0.0526	0.0773
5701901090	0.0526	0.0773
5701902010	0.9474	1.3918
5701902020	0.9474	1.3918
5701902030	0.0526	0.0773
5701902090	0.0526	0.0773
5702101000	0.0447	0.0657
5702109010	0.0447	0.0657
5702109020	0.85	1.2487
5702109030	0.0447	0.0657
5702109090	0.0447	0.0657
5702201000	0.0447	0.0657
5702311000	0.0447	0.0657
5702312000	0.0895	0.1315
5702322000	0.0895	0.1315
5702391000	0.0895	0.1315
5702392010	0.8053	1.1831
5702392090	0.0447	0.0657
5702411000	0.0447	0.0657
5702412000	0.0447	0.0657
5702421000	0.0895	0.1315
5702422020	0.0895	0.1315
5702422080	0.0895	0.1315
5702491020	0.8947	1.3144
5702491080	0.8947	1.3144
5702492000	0.0895	0.1315
5702502000	0.0895	0.1315
5702504000	0.0447	0.0657
5702505200	0.0895	0.1315
5702505600	0.85	1.2487
5702912000	0.0447	0.0657
5702913000	0.0447	0.0657
5702914000	0.0447	0.0657
5702921000	0.0447	0.0657
5702929000	0.0447	0.0657
5702990500	0.8947	1.3144
5702991500	0.8947	1.3144
5703291000	0.0452	0.0664
5703292010	0.0452	0.0664
5703391000	0.0452	0.0664
5703900000	0.3615	0.5311
5705001000	0.0452	0.0664
5705002005	0.0452	0.0664
5705002015	0.0452	0.0664
5705002020	0.7682	1.1286
5705002030	0.0452	0.0664
5705002090	0.1808	0.2656
5801210000	0.9767	1.4349
5801221000	0.9767	1.4349
5801229000	0.9767	1.4349
5801230000	0.9767	1.4349
5801260010	0.7596	1.1159
5801260020	0.7596	1.1159
5801271000	0.9767	1.4349
5801275010	1.0852	1.5943
5801275020	0.9767	1.4349
5801310000	0.217	0.3188
5801320000	0.217	0.3188
5801330000	0.217	0.3188
5801360010	0.217	0.3188
5801360020	0.217	0.3188
5802101000	1.0309	1.5145
5802109000	1.0309	1.5145

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5802200020	0.1085	0.1594
5802200090	0.3256	0.4783
5802300030	0.4341	0.6377
5802300090	0.1085	0.1594
5803001000	1.0852	1.5943
5803002000	0.8681	1.2753
5803003000	0.8681	1.2753
5803005000	0.3256	0.4783
5804101000	0.4341	0.6377
5804109090	0.2193	0.3222
5804291000	0.8772	1.2887
5804300020	0.3256	0.4783
5805001000	0.1085	0.1594
5805003000	1.0852	1.5943
5806101000	0.8681	1.2753
5806103090	0.217	0.3188
5806200010	0.2577	0.3786
5806200090	0.2577	0.3786
5806310000	0.8681	1.2753
5806393080	0.217	0.3188
5806400000	0.0814	0.1196
5807100510	0.8681	1.2753
5807102010	0.8681	1.2753
5807900510	0.8681	1.2753
5807902010	0.8681	1.2753
5808104000	0.217	0.3188
5808107000	0.217	0.3188
5808900010	0.4341	0.6377
5810100000	0.3256	0.4783
5810910010	0.7596	1.1159
5810910020	0.7596	1.1159
5810921000	0.217	0.3188
5810929030	0.217	0.3188
5810929050	0.217	0.3188
5810929080	0.217	0.3188
5811002000	0.8681	1.2753
5901102000	0.5643	0.8290
5901904000	0.8139	1.1957
5903101000	0.4341	0.6377
5903103000	0.1085	0.1594
5903201000	0.4341	0.6377
5903203090	0.1085	0.1594
5903901000	0.4341	0.6377
5903903090	0.1085	0.1594
5904901000	0.0326	0.0479
5905001000	0.1085	0.1594
5905009000	0.1085	0.1594
5906100000	0.4341	0.6377
5906911000	0.4341	0.6377
5906913000	0.1085	0.1594
5906991000	0.4341	0.6377
5906993000	0.1085	0.1594
5907002500	0.3798	0.5580
5907003500	0.3798	0.5580
5907008090	0.3798	0.5580
5908000000	0.7813	1.1478
5909001000	0.6837	1.0044
5909002000	0.4883	0.7174
5910001010	0.3798	0.5580
5910001020	0.3798	0.5580
5910001030	0.3798	0.5580
5910001060	0.3798	0.5580
5910001070	0.3798	0.5580
5910001090	0.6837	1.0044
5910009000	0.5697	0.8369
5911101000	0.1736	0.2550
5911102000	0.0434	0.0638
5911201000	0.4341	0.6377

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
5911310010	0.4341	0.6377
5911310020	0.4341	0.6377
5911310030	0.4341	0.6377
5911310080	0.4341	0.6377
5911320010	0.4341	0.6377
5911320020	0.4341	0.6377
5911320030	0.4341	0.6377
5911320080	0.4341	0.6377
5911400100	0.5426	0.7971
5911900040	0.3158	0.4639
5911900080	0.2105	0.3092
6001106000	0.1096	0.1610
6001210000	0.9868	1.4497
6001220000	0.1096	0.1610
6001290000	0.1096	0.1610
6001910010	0.8772	1.2887
6001910020	0.8772	1.2887
6001920010	0.0548	0.0805
6001920020	0.0548	0.0805
6001920030	0.0548	0.0805
6001920040	0.0548	0.0805
6001999000	0.1096	0.1610
6002404000	0.7401	1.0873
6002408020	0.1974	0.2900
6002408080	0.1974	0.2900
6002904000	0.7895	1.1599
6002908020	0.1974	0.2900
6002908080	0.1974	0.2900
6003201000	0.8772	1.2887
6003203000	0.8772	1.2887
6003301000	0.1096	0.1610
6003306000	0.1096	0.1610
6003401000	0.1096	0.1610
6003406000	0.1096	0.1610
6003901000	0.1096	0.1610
6003909000	0.1096	0.1610
6004100010	0.2961	0.4350
6004100025	0.2961	0.4350
6004100085	0.2961	0.4350
6004902010	0.2961	0.4350
6004902025	0.2961	0.4350
6004902085	0.2961	0.4350
6004909000	0.2961	0.4350
6005210000	0.7127	1.0470
6005220000	0.7127	1.0470
6005230000	0.7127	1.0470
6005240000	0.7127	1.0470
6005360010	0.1096	0.1610
6005360080	0.1096	0.1610
6005370010	0.1096	0.1610
6005370080	0.1096	0.1610
6005380010	0.1096	0.1610
6005380080	0.1096	0.1610
6005390010	0.1096	0.1610
6005390080	0.1096	0.1610
6005410010	0.1096	0.1610
6005410080	0.1096	0.1610
6005420010	0.1096	0.1610
6005420080	0.1096	0.1610
6005430010	0.1096	0.1610
6005430080	0.1096	0.1610
6005440010	0.1096	0.1610
6005440080	0.1096	0.1610
6005909000	0.1096	0.1610
6006211000	1.0965	1.6109
6006219020	0.7675	1.1275
6006219080	0.7675	1.1275
6006221000	1.0965	1.6109

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6006229020	0.7675	1.1275
6006229080	0.7675	1.1275
6006231000	1.0965	1.6109
6006239020	0.7675	1.1275
6006239080	0.7675	1.1275
6006241000	1.0965	1.6109
6006249020	0.7675	1.1275
6006249080	0.7675	1.1275
6006310020	0.3289	0.4832
6006310040	0.3289	0.4832
6006310060	0.3289	0.4832
6006310080	0.3289	0.4832
6006320020	0.3289	0.4832
6006320040	0.3289	0.4832
6006320060	0.3289	0.4832
6006320080	0.3289	0.4832
6006330020	0.3289	0.4832
6006330040	0.3289	0.4832
6006330060	0.3289	0.4832
6006330080	0.3289	0.4832
6006340020	0.3289	0.4832
6006340040	0.3289	0.4832
6006340060	0.3289	0.4832
6006340080	0.3289	0.4832
6006410025	0.3289	0.4832
6006410085	0.3289	0.4832
6006420025	0.3289	0.4832
6006420085	0.3289	0.4832
6006430025	0.3289	0.4832
6006430085	0.3289	0.4832
6006440025	0.3289	0.4832
6006440085	0.3289	0.4832
6006909000	0.1096	0.1610
6101200010	1.02	1.4985
6101200020	1.02	1.4985
6101301000	0.2072	0.3044
6101900500	0.1912	0.2809
6101909010	0.5737	0.8428
6101909030	0.51	0.7492
6101909060	0.255	0.3746
6102100000	0.255	0.3746
6102200010	0.9562	1.4048
6102200020	0.9562	1.4048
6102300500	0.1785	0.2622
6102909005	0.5737	0.8428
6102909015	0.4462	0.6555
6102909030	0.255	0.3746
6103101000	0.0637	0.0936
6103104000	0.1218	0.1789
6103105000	0.1218	0.1789
6103106010	0.8528	1.2528
6103106015	0.8528	1.2528
6103106030	0.8528	1.2528
6103109010	0.5482	0.8054
6103109020	0.5482	0.8054
6103109030	0.5482	0.8054
6103109040	0.1218	0.1789
6103109050	0.1218	0.1789
6103109080	0.1827	0.2684
6103320000	0.8722	1.2813
6103398010	0.7476	1.0983
6103398030	0.3738	0.5491
6103398060	0.2492	0.3661
6103411010	0.3576	0.5254
6103411020	0.3576	0.5254
6103412000	0.3576	0.5254
6103421020	0.8343	1.2257
6103421035	0.8343	1.2257

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6103421040	0.8343	1.2257
6103421050	0.8343	1.2257
6103421065	0.8343	1.2257
6103421070	0.8343	1.2257
6103422010	0.8343	1.2257
6103422015	0.8343	1.2257
6103422025	0.8343	1.2257
6103431520	0.2384	0.3502
6103431535	0.2384	0.3502
6103431540	0.2384	0.3502
6103431550	0.2384	0.3502
6103431565	0.2384	0.3502
6103431570	0.2384	0.3502
6103432020	0.2384	0.3502
6103432025	0.2384	0.3502
6103491020	0.2437	0.3580
6103491060	0.2437	0.3580
6103492000	0.2437	0.3580
6103498010	0.5482	0.8054
6103498014	0.3655	0.5370
6103498024	0.2437	0.3580
6103498026	0.2437	0.3580
6103498034	0.5482	0.8054
6103498038	0.3655	0.5370
6103498060	0.2437	0.3580
6104196010	0.8722	1.2813
6104196020	0.8722	1.2813
6104196030	0.8722	1.2813
6104196040	0.8722	1.2813
6104198010	0.5607	0.8237
6104198020	0.5607	0.8237
6104198030	0.5607	0.8237
6104198040	0.5607	0.8237
6104198060	0.3738	0.5491
6104198090	0.2492	0.3661
6104220010	0.8528	1.2528
6104220030	0.8528	1.2528
6104220040	0.8528	1.2528
6104220050	0.8528	1.2528
6104220060	0.8528	1.2528
6104220080	0.731	1.0739
6104220090	0.8528	1.2528
6104320000	0.8722	1.2813
6104392010	0.5607	0.8237
6104392030	0.3738	0.5491
6104392090	0.2492	0.3661
6104420010	0.8528	1.2528
6104420020	0.8528	1.2528
6104499010	0.5482	0.8054
6104499030	0.3655	0.5370
6104499060	0.2437	0.3580
6104520010	0.8822	1.2960
6104520020	0.8822	1.2960
6104598010	0.5672	0.8333
6104598030	0.3781	0.5555
6104598090	0.2521	0.3704
6104610010	0.2384	0.3502
6104610020	0.2384	0.3502
6104610030	0.2384	0.3502
6104621010	0.7509	1.1031
6104621020	0.8343	1.2257
6104621030	0.8343	1.2257
6104622006	0.7151	1.0506
6104622011	0.8343	1.2257
6104622016	0.7151	1.0506
6104622021	0.8343	1.2257
6104622026	0.7151	1.0506
6104622028	0.8343	1.2257

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6104622030	0.8343	1.2257
6104622050	0.8343	1.2257
6104622060	0.8343	1.2257
6104631020	0.2384	0.3502
6104631030	0.2384	0.3502
6104632006	0.8343	1.2257
6104632011	0.8343	1.2257
6104632016	0.7151	1.0506
6104632021	0.8343	1.2257
6104632026	0.3576	0.5254
6104632028	0.3576	0.5254
6104632030	0.3576	0.5254
6104632050	0.7151	1.0506
6104632060	0.3576	0.5254
6104691000	0.3655	0.5370
6104692030	0.3655	0.5370
6104692060	0.3655	0.5370
6104698010	0.5482	0.8054
6104698014	0.3655	0.5370
6104698020	0.2437	0.3580
6104698022	0.5482	0.8054
6104698026	0.3655	0.5370
6104698038	0.2437	0.3580
6104698040	0.2437	0.3580
6105100010	0.9332	1.3710
6105100020	0.9332	1.3710
6105100030	0.9332	1.3710
6105202010	0.2916	0.4284
6105202020	0.2916	0.4284
6105202030	0.2916	0.4284
6105908010	0.5249	0.7711
6105908030	0.3499	0.5140
6105908060	0.2333	0.3427
6106100010	0.9332	1.3710
6106100020	0.9332	1.3710
6106100030	0.9332	1.3710
6106202010	0.2916	0.4284
6106202020	0.4666	0.6855
6106202030	0.2916	0.4284
6106901500	0.0583	0.0856
6106902510	0.5249	0.7711
6106902530	0.3499	0.5140
6106902550	0.2916	0.4284
6106903010	0.5249	0.7711
6106903030	0.3499	0.5140
6106903040	0.2916	0.4284
6107110010	1.0727	1.5759
6107110020	1.0727	1.5759
6107120010	0.4767	0.7003
6107120020	0.4767	0.7003
6107191000	0.1192	0.1751
6107210010	0.8343	1.2257
6107210020	0.7151	1.0506
6107220010	0.3576	0.5254
6107220015	0.1192	0.1751
6107220025	0.2384	0.3502
6107299000	0.1788	0.2627
6107910030	1.1918	1.7509
6107910040	1.1918	1.7509
6107910090	0.9535	1.4008
6107991030	0.3576	0.5254
6107991040	0.3576	0.5254
6107991090	0.3576	0.5254
6107999000	0.1192	0.1751
6108199010	1.0611	1.5589
6108199030	0.2358	0.3464
6108210010	1.179	1.7321
6108210020	1.179	1.7321

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6108299000	0.3537	0.5196
6108310010	1.0611	1.5589
6108310020	1.0611	1.5589
6108320010	0.2358	0.3464
6108320015	0.2358	0.3464
6108320025	0.2358	0.3464
6108398000	0.3537	0.5196
6108910005	1.179	1.7321
6108910015	1.179	1.7321
6108910025	1.179	1.7321
6108910030	1.179	1.7321
6108910040	1.179	1.7321
6108920005	0.2358	0.3464
6108920015	0.2358	0.3464
6108920025	0.2358	0.3464
6108920030	0.2358	0.3464
6108920040	0.2358	0.3464
6108999000	0.3537	0.5196
6109100004	1.0022	1.4723
6109100007	1.0022	1.4723
6109100011	1.0022	1.4723
6109100012	1.0022	1.4723
6109100014	1.0022	1.4723
6109100018	1.0022	1.4723
6109100023	1.0022	1.4723
6109100027	1.0022	1.4723
6109100037	1.0022	1.4723
6109100040	1.0022	1.4723
6109100045	1.0022	1.4723
6109100060	1.0022	1.4723
6109100065	1.0022	1.4723
6109100070	1.0022	1.4723
6109901007	0.2948	0.4331
6109901009	0.2948	0.4331
6109901013	0.2948	0.4331
6109901025	0.2948	0.4331
6109901047	0.2948	0.4331
6109901049	0.2948	0.4331
6109901050	0.2948	0.4331
6109901060	0.2948	0.4331
6109901065	0.2948	0.4331
6109901070	0.2948	0.4331
6109901075	0.2948	0.4331
6109901090	0.2948	0.4331
6109908010	0.3499	0.5140
6109908030	0.2333	0.3427
6110201010	0.7476	1.0983
6110201020	0.7476	1.0983
6110201022	0.7476	1.0983
6110201024	0.7476	1.0983
6110201026	0.7476	1.0983
6110201029	0.7476	1.0983
6110201031	0.7476	1.0983
6110201033	0.7476	1.0983
6110202005	1.1214	1.6474
6110202010	1.1214	1.6474
6110202015	1.1214	1.6474
6110202020	1.1214	1.6474
6110202025	1.1214	1.6474
6110202030	1.1214	1.6474
6110202035	1.1214	1.6474
6110202041	1.0965	1.6109
6110202044	1.0965	1.6109
6110202046	1.0965	1.6109
6110202049	1.0965	1.6109
6110202067	1.0965	1.6109
6110202069	1.0965	1.6109
6110202077	1.0965	1.6109

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6110202079	1.0965	1.6109
6110909010	0.5607	0.8237
6110909012	0.1246	0.1830
6110909014	0.3738	0.5491
6110909026	0.5607	0.8237
6110909028	0.1869	0.2746
6110909030	0.3738	0.5491
6110909044	0.5607	0.8237
6110909046	0.5607	0.8237
6110909052	0.3738	0.5491
6110909054	0.3738	0.5491
6110909064	0.2492	0.3661
6110909066	0.2492	0.3661
6110909067	0.5607	0.8237
6110909069	0.5607	0.8237
6110909071	0.5607	0.8237
6110909073	0.5607	0.8237
6110909079	0.3738	0.5491
6110909080	0.3738	0.5491
6110909081	0.3738	0.5491
6110909082	0.3738	0.5491
6110909088	0.2492	0.3661
6110909090	0.2492	0.3661
6111201000	1.1918	1.7509
6111202000	1.1918	1.7509
6111203000	0.9535	1.4008
6111204000	0.9535	1.4008
6111205000	0.9535	1.4008
6111206010	0.9535	1.4008
6111206020	0.9535	1.4008
6111206030	0.9535	1.4008
6111206050	0.9535	1.4008
6111206070	0.9535	1.4008
6111301000	0.2384	0.3502
6111302000	0.2384	0.3502
6111303000	0.2384	0.3502
6111304000	0.2384	0.3502
6111305010	0.2384	0.3502
6111305015	0.2384	0.3502
6111305020	0.2384	0.3502
6111305030	0.2384	0.3502
6111305050	0.2384	0.3502
6111305070	0.2384	0.3502
6111901000	0.2384	0.3502
6111902000	0.2384	0.3502
6111903000	0.2384	0.3502
6111904000	0.2384	0.3502
6111905010	0.2384	0.3502
6111905020	0.2384	0.3502
6111905030	0.2384	0.3502
6111905050	0.2384	0.3502
6111905070	0.2384	0.3502
6112110010	0.9535	1.4008
6112110020	0.9535	1.4008
6112110030	0.9535	1.4008
6112110040	0.9535	1.4008
6112110050	0.9535	1.4008
6112110060	0.9535	1.4008
6112120010	0.2384	0.3502
6112120020	0.2384	0.3502
6112120030	0.2384	0.3502
6112120040	0.2384	0.3502
6112120050	0.2384	0.3502
6112120060	0.2384	0.3502
6112191010	0.2492	0.3661
6112191020	0.2492	0.3661
6112191030	0.2492	0.3661
6112191040	0.2492	0.3661

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6112191050	0.2492	0.3661
6112191060	0.2492	0.3661
6112201060	0.2492	0.3661
6112201070	0.2492	0.3661
6112201080	0.2492	0.3661
6112201090	0.2492	0.3661
6112202010	0.8722	1.2813
6112202020	0.3738	0.5491
6112202030	0.2492	0.3661
6112310010	0.1192	0.1751
6112310020	0.1192	0.1751
6112390010	1.0727	1.5759
6112410010	0.1192	0.1751
6112410020	0.1192	0.1751
6112410030	0.1192	0.1751
6112410040	0.1192	0.1751
6112490010	0.8939	1.3132
6113001005	0.1246	0.1830
6113001010	0.1246	0.1830
6113001012	0.1246	0.1830
6113009015	0.3489	0.5126
6113009020	0.3489	0.5126
6113009038	0.3489	0.5126
6113009042	0.3489	0.5126
6113009055	0.3489	0.5126
6113009060	0.3489	0.5126
6113009074	0.3489	0.5126
6113009082	0.3489	0.5126
6114200005	0.9747	1.4319
6114200010	0.9747	1.4319
6114200015	0.8528	1.2528
6114200020	0.8528	1.2528
6114200035	0.8528	1.2528
6114200040	0.8528	1.2528
6114200042	0.3655	0.5370
6114200044	0.8528	1.2528
6114200046	0.8528	1.2528
6114200048	0.8528	1.2528
6114200052	0.8528	1.2528
6114200055	0.8528	1.2528
6114200060	0.8528	1.2528
6114301010	0.2437	0.3580
6114301020	0.2437	0.3580
6114302060	0.1218	0.1789
6114303014	0.2437	0.3580
6114303020	0.2437	0.3580
6114303030	0.2437	0.3580
6114303042	0.2437	0.3580
6114303044	0.2437	0.3580
6114303052	0.2437	0.3580
6114303054	0.2437	0.3580
6114303060	0.2437	0.3580
6114303070	0.2437	0.3580
6114909045	0.5482	0.8054
6114909055	0.3655	0.5370
6114909070	0.3655	0.5370
6115100500	0.4386	0.6443
6115101510	1.0965	1.6109
6115103000	0.9868	1.4497
6115106000	0.1096	0.1610
6115298010	1.0965	1.6109
6115309030	0.7675	1.1275
6115956000	0.9868	1.4497
6115959000	0.9868	1.4497
6115966020	0.2193	0.3222
6115991420	0.2193	0.3222
6115991920	0.2193	0.3222
6115999000	0.1096	0.1610

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6116101300	0.3463	0.5087
6116101720	0.8079	1.1869
6116104810	0.4444	0.6529
6116105510	0.6464	0.9496
6116107510	0.6464	0.9496
6116109500	0.1616	0.2374
6116920500	0.8079	1.1869
6116920800	0.8079	1.1869
6116926410	1.0388	1.5261
6116926420	1.0388	1.5261
6116926430	1.1542	1.6956
6116926440	1.0388	1.5261
6116927450	1.0388	1.5261
6116927460	1.1542	1.6956
6116927470	1.0388	1.5261
6116928800	1.0388	1.5261
6116929400	1.0388	1.5261
6116938800	0.1154	0.1695
6116939400	0.1154	0.1695
6116994800	0.1154	0.1695
6116995400	0.1154	0.1695
6116999510	0.4617	0.6783
6116999530	0.3463	0.5087
6117106010	0.9234	1.3566
6117106020	0.2308	0.3391
6117808500	0.9234	1.3566
6117808710	1.1542	1.6956
6117808770	0.1731	0.2543
6117809510	0.9234	1.3566
6117809540	0.3463	0.5087
6117809570	0.1731	0.2543
6117909003	1.1542	1.6956
6117909015	0.2308	0.3391
6117909020	1.1542	1.6956
6117909040	1.1542	1.6956
6117909060	1.1542	1.6956
6117909080	1.1542	1.6956
6201301200	0.8981	1.3194
6201302010	1.0602	1.5575
6201302020	1.0602	1.5575
6201302025	1.2473	1.8324
6201302035	1.2473	1.8324
6201302050	0.8108	1.1911
6201302060	0.8108	1.1911
6201303000	0.6486	0.9529
6201304000	0.8108	1.1911
6201305005	0.8108	1.1911
6201305010	0.8108	1.1911
6201305021	1.2473	1.8324
6201305031	1.2473	1.8324
6201305041	1.2473	1.8324
6201305051	0.8108	1.1911
6201305061	0.8108	1.1911
6201306000	0.6486	0.9529
6201307000	0.8108	1.1911
6201308005	0.8108	1.1911
6201308010	0.8108	1.1911
6201308021	1.2473	1.8324
6201308031	1.2473	1.8324
6201308041	1.2473	1.8324
6201308051	0.8108	1.1911
6201308061	0.8108	1.1911
6201402015	0.2495	0.3665
6201402020	0.2495	0.3665
6201402030	0.3118	0.4581
6201402040	0.3118	0.4581
6201404500	0.3118	0.4581
6201405011	0.3118	0.4581

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204294022	0.5549	0.8152
6204294034	0.5549	0.8152
6204294070	0.5549	0.8152
6204294082	0.5549	0.8152
6204321000	0.6782	0.9963
6204322010	1.1715	1.7211
6204322020	1.1715	1.7211
6204322030	0.9865	1.4493
6204322040	0.9865	1.4493
6204398010	0.5549	0.8152
6204398030	0.3083	0.4529
6204412010	0.0603	0.0886
6204412020	0.0603	0.0886
6204421000	1.2058	1.7714
6204422000	0.6632	0.9743
6204423010	1.2058	1.7714
6204423020	1.2058	1.7714
6204423030	0.9043	1.3285
6204423040	0.9043	1.3285
6204423050	0.9043	1.3285
6204423060	0.9043	1.3285
6204431000	0.4823	0.7085
6204432000	0.0603	0.0886
6204442000	0.4316	0.6341
6204495010	0.5549	0.8152
6204495030	0.2466	0.3623
6204510010	0.0631	0.0927
6204510020	0.0631	0.0927
6204521000	1.2618	1.8537
6204522010	1.1988	1.7612
6204522020	1.1988	1.7612
6204522030	1.1988	1.7612
6204522040	1.1988	1.7612
6204522070	1.0095	1.4831
6204522080	1.0095	1.4831
6204531000	0.4416	0.6488
6204532010	0.0631	0.0927
6204532020	0.0631	0.0927
6204533010	0.2524	0.3708
6204533020	0.2524	0.3708
6204591000	0.4416	0.6488
6204594010	0.5678	0.8342
6204594030	0.2524	0.3708
6204594060	0.2524	0.3708
6204610510	0.059	0.0867
6204610520	0.059	0.0867
6204611510	0.059	0.0867
6204611520	0.059	0.0867
6204611530	0.059	0.0867
6204611540	0.118	0.1734
6204616010	0.059	0.0867
6204616020	0.059	0.0867
6204618010	0.059	0.0867
6204618020	0.059	0.0867
6204618030	0.059	0.0867
6204618040	0.118	0.1734
6204620300	0.8681	1.2753
6204620505	0.7077	1.0397
6204620510	0.9436	1.3862
6204620525	0.9436	1.3862
6204620550	0.9436	1.3862
6204621503	1.0616	1.5596
6204621506	1.1796	1.7330
6204621511	1.1796	1.7330
6204621521	0.9436	1.3862
6204621526	1.1796	1.7330
6204621531	1.1796	1.7330
6204621536	1.1796	1.7330

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204621541	1.1796	1.7330
6204621546	0.9436	1.3862
6204621551	0.9436	1.3862
6204621556	0.9335	1.3714
6204621561	0.9335	1.3714
6204621566	0.9335	1.3714
6204625000	0.8681	1.2753
6204626005	0.7077	1.0397
6204626010	0.9436	1.3862
6204626025	0.9436	1.3862
6204626050	0.9436	1.3862
6204627000	1.1796	1.7330
6204628003	1.0616	1.5596
6204628006	1.1796	1.7330
6204628011	1.1796	1.7330
6204628021	0.9436	1.3862
6204628026	1.1796	1.7330
6204628031	1.1796	1.7330
6204628036	1.1796	1.7330
6204628041	1.1796	1.7330
6204628046	0.9436	1.3862
6204628051	0.9436	1.3862
6204628056	0.9335	1.3714
6204628061	0.9335	1.3714
6204628066	0.9335	1.3714
6204630100	0.2019	0.2966
6204630200	0.118	0.1734
6204630305	0.118	0.1734
6204630310	0.2359	0.3466
6204630325	0.2359	0.3466
6204630350	0.2359	0.3466
6204630810	0.059	0.0867
6204630820	0.059	0.0867
6204630910	0.0603	0.0886
6204630990	0.0603	0.0886
6204631110	0.2412	0.3543
6204631125	0.2412	0.3543
6204631130	0.2412	0.3543
6204631132	0.2309	0.3392
6204631135	0.2309	0.3392
6204631140	0.2309	0.3392
6204635000	0.2019	0.2966
6204635500	0.118	0.1734
6204636005	0.118	0.1734
6204636010	0.2359	0.3466
6204636025	0.2359	0.3466
6204636050	0.2359	0.3466
6204636500	0.4718	0.6931
6204637010	0.059	0.0867
6204637020	0.059	0.0867
6204637510	0.0603	0.0886
6204637590	0.0603	0.0886
6204639010	0.2412	0.3543
6204639025	0.2412	0.3543
6204639030	0.2412	0.3543
6204639032	0.2309	0.3392
6204639035	0.2309	0.3392
6204639040	0.2309	0.3392
6204690105	0.118	0.1734
6204690110	0.2359	0.3466
6204690125	0.2359	0.3466
6204690150	0.2359	0.3466
6204690210	0.059	0.0867
6204690220	0.059	0.0867
6204690230	0.059	0.0867
6204690310	0.2359	0.3466
6204690320	0.2359	0.3466
6204690330	0.2359	0.3466

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6204690340	0.2309	0.3392
6204690350	0.2309	0.3392
6204690360	0.2309	0.3392
6204690510	0.5308	0.7798
6204690530	0.2359	0.3466
6204690570	0.3539	0.5199
6204690610	0.5308	0.7798
6204690630	0.2359	0.3466
6204690644	0.2359	0.3466
6204690646	0.2359	0.3466
6204690650	0.3539	0.5199
6204691505	0.118	0.1734
6204691510	0.2359	0.3466
6204691525	0.2359	0.3466
6204691550	0.2359	0.3466
6204692210	0.059	0.0867
6204692220	0.059	0.0867
6204692230	0.059	0.0867
6204692810	0.2359	0.3466
6204692820	0.2359	0.3466
6204692830	0.2359	0.3466
6204692840	0.2309	0.3392
6204692850	0.2309	0.3392
6204692860	0.2309	0.3392
6204696510	0.5308	0.7798
6204696530	0.2359	0.3466
6204696570	0.3539	0.5199
6204698010	0.5308	0.7798
6204698030	0.2359	0.3466
6204698044	0.2359	0.3466
6204698046	0.2359	0.3466
6204698050	0.3539	0.5199
6205201000	1.1796	1.7330
6205202003	0.9436	1.3862
6205202016	0.9436	1.3862
6205202021	0.9436	1.3862
6205202026	0.9436	1.3862
6205202031	0.9436	1.3862
6205202036	1.0616	1.5596
6205202041	1.0616	1.5596
6205202044	1.0616	1.5596
6205202047	0.9436	1.3862
6205202051	0.9436	1.3862
6205202056	0.9436	1.3862
6205202061	0.9436	1.3862
6205202066	0.9436	1.3862
6205202071	0.9436	1.3862
6205202076	0.9436	1.3862
6205301000	0.4128	0.6064
6205302010	0.2949	0.4332
6205302020	0.2949	0.4332
6205302030	0.2949	0.4332
6205302040	0.2949	0.4332
6205302050	0.2949	0.4332
6205302055	0.2949	0.4332
6205302060	0.2949	0.4332
6205302070	0.2949	0.4332
6205302075	0.2949	0.4332
6205302080	0.2949	0.4332
6205900710	0.118	0.1734
6205900720	0.118	0.1734
6205901000	0.2359	0.3466
6205903010	0.5308	0.7798
6205903030	0.2359	0.3466
6205903050	0.1769	0.2599
6205904010	0.5308	0.7798
6205904030	0.2359	0.3466
6205904040	0.2359	0.3466

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6206100010	0.5308	0.7798
6206100030	0.2359	0.3466
6206100040	0.118	0.1734
6206100050	0.2359	0.3466
6206203010	0.059	0.0867
6206203020	0.059	0.0867
6206301000	1.1796	1.7330
6206302000	0.6488	0.9532
6206303003	0.9436	1.3862
6206303011	0.9436	1.3862
6206303021	0.9436	1.3862
6206303031	0.9436	1.3862
6206303041	0.9436	1.3862
6206303051	0.9436	1.3862
6206303061	0.9436	1.3862
6206401000	0.4128	0.6064
6206403010	0.2949	0.4332
6206403020	0.2949	0.4332
6206403025	0.2949	0.4332
6206403030	0.2949	0.4332
6206403040	0.2949	0.4332
6206403050	0.2949	0.4332
6206900010	0.5308	0.7798
6206900030	0.2359	0.3466
6206900040	0.1769	0.2599
6207110000	1.0281	1.5104
6207199010	0.3427	0.5035
6207199030	0.4569	0.6712
6207210010	1.0502	1.5428
6207210020	1.0502	1.5428
6207210030	1.0502	1.5428
6207210040	1.0502	1.5428
6207220000	0.3501	0.5143
6207291000	0.1167	0.1714
6207299030	0.1167	0.1714
6207911000	1.0852	1.5943
6207913010	1.0852	1.5943
6207913020	1.0852	1.5943
6207997520	0.2412	0.3543
6207998510	0.2412	0.3543
6207998520	0.2412	0.3543
6208110000	0.2412	0.3543
6208192000	1.0852	1.5943
6208195000	0.1206	0.1772
6208199000	0.2412	0.3543
6208210010	1.0026	1.4729
6208210020	1.0026	1.4729
6208210030	1.0026	1.4729
6208220000	0.118	0.1734
6208299030	0.2359	0.3466
6208911010	1.0852	1.5943
6208911020	1.0852	1.5943
6208913010	1.0852	1.5943
6208913020	1.0852	1.5943
6208920010	0.1206	0.1772
6208920020	0.1206	0.1772
6208920030	0.1206	0.1772
6208920040	0.1206	0.1772
6208992010	0.0603	0.0886
6208992020	0.0603	0.0886
6208995010	0.2412	0.3543
6208995020	0.2412	0.3543
6208998010	0.2412	0.3543
6208998020	0.2412	0.3543
6209201000	1.0967	1.6112
6209202000	1.039	1.5264
6209203000	0.9236	1.3569
6209205030	0.9236	1.3569

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6209205035	0.9236	1.3569
6209205045	0.9236	1.3569
6209205050	0.9236	1.3569
6209301000	0.2917	0.4285
6209302000	0.2917	0.4285
6209303010	0.2334	0.3429
6209303020	0.2334	0.3429
6209303030	0.2334	0.3429
6209303040	0.2334	0.3429
6209900500	0.1154	0.1695
6209901000	0.2917	0.4285
6209902000	0.2917	0.4285
6209903010	0.2917	0.4285
6209903015	0.2917	0.4285
6209903020	0.2917	0.4285
6209903030	0.2917	0.4285
6209903040	0.2917	0.4285
6210109010	0.217	0.3188
6210109040	0.217	0.3188
6210203000	0.0362	0.0532
6210205010	0.0844	0.1240
6210205020	0.4316	0.6341
6210205029	0.4316	0.6341
6210207000	0.1809	0.2658
6210209039	0.1110	0.1631
6210209049	0.1110	0.1631
6210303000	0.0362	0.0532
6210305010	0.0844	0.1240
6210305020	0.0863	0.1268
6210305029	0.0863	0.1268
6210307000	0.0362	0.0532
6210309020	0.422	0.6200
6210309039	0.1480	0.2174
6210309049	0.1480	0.2174
6210401500	0.037	0.0544
6210402531	0.0863	0.1268
6210402539	0.0863	0.1268
6210402540	0.4316	0.6341
6210402550	0.4316	0.6341
6210402800	0.111	0.1631
6210402933	0.111	0.1631
6210402945	0.111	0.1631
6210402960	0.111	0.1631
6210403500	0.037	0.0544
6210405531	0.0863	0.1268
6210405539	0.0863	0.1268
6210405540	0.4316	0.6341
6210405550	0.4316	0.6341
6210407500	0.111	0.1631
6210408033	0.111	0.1631
6210408045	0.111	0.1631
6210408060	0.111	0.1631
6210500300	0.037	0.0544
6210500531	0.0863	0.1268
6210500539	0.0863	0.1268
6210500540	0.0863	0.1268
6210500555	0.0863	0.1268
6210501200	0.4316	0.6341
6210502260	0.148	0.2174
6210502270	0.148	0.2174
6210502290	0.148	0.2174
6210503500	0.037	0.0544
6210505531	0.0863	0.1268
6210505539	0.0863	0.1268
6210505540	0.0863	0.1268
6210505555	0.0863	0.1268
6210507500	0.4316	0.6341
6210508060	0.148	0.2174

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6210508070	0.148	0.2174
6210508090	0.148	0.2174
6211111010	0.1206	0.1772
6211111020	0.1206	0.1772
6211118010	1.0852	1.5943
6211118020	1.0852	1.5943
6211118040	0.2412	0.3543
6211121010	0.0603	0.0886
6211121020	0.0603	0.0886
6211128010	1.0852	1.5943
6211128020	1.0852	1.5943
6211128030	0.6029	0.8857
6211200410	0.7717	1.1337
6211200420	0.0965	0.1418
6211200430	0.7717	1.1337
6211200440	0.0965	0.1418
6211200810	0.3858	0.5668
6211200820	0.3858	0.5668
6211201510	0.7615	1.1187
6211201515	0.2343	0.3442
6211201520	0.6443	0.9465
6211201525	0.2929	0.4303
6211201530	0.7615	1.1187
6211201535	0.3515	0.5164
6211201540	0.7615	1.1187
6211201545	0.2929	0.4303
6211201550	0.7615	1.1187
6211201555	0.41	0.6023
6211201560	0.7615	1.1187
6211201565	0.2343	0.3442
6211202400	0.1233	0.1811
6211202810	0.8016	1.1776
6211202820	0.2466	0.3623
6211202830	0.3083	0.4529
6211203400	0.1233	0.1811
6211203810	0.8016	1.1776
6211203820	0.2466	0.3623
6211203830	0.3083	0.4529
6211204400	0.1233	0.1811
6211204815	0.8016	1.1776
6211204835	0.2466	0.3623
6211204860	0.3083	0.4529
6211205400	0.1233	0.1811
6211205810	0.8016	1.1776
6211205820	0.2466	0.3623
6211205830	0.3083	0.4529
6211206400	0.1233	0.1811
6211206810	0.8016	1.1776
6211206820	0.2466	0.3623
6211206830	0.3083	0.4529
6211207400	0.1233	0.1811
6211207810	0.9249	1.3588
6211207820	0.2466	0.3623
6211207830	0.3083	0.4529
6211325003	0.6412	0.9420
6211325003	0.6412	0.9420
6211325007	0.8016	1.1776
6211325010	0.8016	1.1776
6211325015	0.9865	1.4493
6211325025	0.9865	1.4493
6211325030	0.9249	1.3588
6211325040	0.9249	1.3588
6211325050	0.9249	1.3588
6211325060	0.9249	1.3588
6211325070	0.9249	1.3588
6211325075	0.9249	1.3588
6211325081	0.9249	1.3588

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211329003	0.6412	0.9420
6211329007	0.8016	1.1776
6211329010	0.9865	1.4493
6211329015	0.9865	1.4493
6211329025	0.9865	1.4493
6211329030	0.9249	1.3588
6211329040	0.9249	1.3588
6211329050	0.9249	1.3588
6211329060	0.9249	1.3588
6211329070	0.9249	1.3588
6211329075	0.9249	1.3588
6211329081	0.9249	1.3588
6211335003	0.0987	0.1450
6211335007	0.1233	0.1811
6211335010	0.3083	0.4529
6211335015	0.3083	0.4529
6211335017	0.3083	0.4529
6211335025	0.37	0.5436
6211335030	0.37	0.5436
6211335035	0.37	0.5436
6211335040	0.37	0.5436
6211335054	0.37	0.5436
6211335058	0.37	0.5436
6211335061	0.37	0.5436
6211339003	0.0987	0.1450
6211339007	0.1233	0.1811
6211339010	0.3083	0.4529
6211339015	0.3083	0.4529
6211339017	0.3083	0.4529
6211339025	0.37	0.5436
6211339030	0.37	0.5436
6211339035	0.37	0.5436
6211339040	0.37	0.5436
6211339054	0.37	0.5436
6211339058	0.37	0.5436
6211339061	0.37	0.5436
6211390310	0.1233	0.1811
6211390320	0.1233	0.1811
6211390330	0.1233	0.1811
6211390340	0.1233	0.1811
6211390345	0.1233	0.1811
6211390351	0.1233	0.1811
6211391510	0.2466	0.3623
6211391520	0.2466	0.3623
6211391530	0.2466	0.3623
6211391540	0.2466	0.3623
6211391550	0.2466	0.3623
6211391560	0.2466	0.3623
6211391570	0.2466	0.3623
6211391590	0.2466	0.3623
6211393010	0.1233	0.1811
6211393020	0.1233	0.1811
6211393030	0.1233	0.1811
6211393040	0.1233	0.1811
6211393045	0.1233	0.1811
6211393051	0.1233	0.1811
6211398010	0.2466	0.3623
6211398020	0.2466	0.3623
6211398030	0.2466	0.3623
6211398040	0.2466	0.3623
6211398050	0.2466	0.3623
6211398060	0.2466	0.3623
6211398070	0.2466	0.3623
6211398090	0.2466	0.3623
6211420503	0.6412	0.9420
6211420507	0.8016	1.1776
6211420510	0.9865	1.4493
6211420520	0.9865	1.4493

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6211420525	1.1099	1.6306
6211420530	0.8632	1.2681
6211420540	0.9865	1.4493
6211420554	1.1099	1.6306
6211420556	1.1099	1.6306
6211420560	0.9865	1.4493
6211420570	1.1099	1.6306
6211420575	1.1099	1.6306
6211420581	1.1099	1.6306
6211421003	0.6412	0.9420
6211421007	0.8016	1.1776
6211421010	0.9865	1.4493
6211421020	0.9865	1.4493
6211421025	1.1099	1.6306
6211421030	0.8632	1.2681
6211421040	0.9865	1.4493
6211421054	1.1099	1.6306
6211421056	1.1099	1.6306
6211421060	0.9865	1.4493
6211421070	1.1099	1.6306
6211421075	1.1099	1.6306
6211421081	1.1099	1.6306
6211430503	0.0987	0.1450
6211430507	0.1233	0.1811
6211430510	0.2466	0.3623
6211430520	0.2466	0.3623
6211430530	0.2466	0.3623
6211430540	0.2466	0.3623
6211430550	0.2466	0.3623
6211430560	0.2466	0.3623
6211430564	0.3083	0.4529
6211430566	0.2466	0.3623
6211430574	0.3083	0.4529
6211430576	0.37	0.5436
6211430578	0.37	0.5436
6211430591	0.2466	0.3623
6211431003	0.0987	0.1450
6211431007	0.1233	0.1811
6211431010	0.2466	0.3623
6211431020	0.2466	0.3623
6211431030	0.2466	0.3623
6211431040	0.2466	0.3623
6211431050	0.2466	0.3623
6211431060	0.2466	0.3623
6211431064	0.3083	0.4529
6211431066	0.2466	0.3623
6211431074	0.3083	0.4529
6211431076	0.37	0.5436
6211431078	0.37	0.5436
6211431091	0.2466	0.3623
6211492510	0.2466	0.3623
6211492520	0.2466	0.3623
6211492530	0.2466	0.3623
6211492540	0.2466	0.3623
6211492550	0.2466	0.3623
6211492560	0.2466	0.3623
6211492570	0.2466	0.3623
6211492580	0.2466	0.3623
6211492590	0.2466	0.3623
6211498010	0.2466	0.3623
6211498020	0.2466	0.3623
6211498030	0.2466	0.3623
6211498040	0.2466	0.3623
6211498050	0.2466	0.3623
6211498060	0.2466	0.3623
6211498070	0.2466	0.3623
6211498080	0.2466	0.3623
6211498090	0.2466	0.3623

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6212105010	0.9138	1.3425
6212105020	0.2285	0.3357
6212105030	0.2285	0.3357
6212109010	0.9138	1.3425
6212109020	0.2285	0.3357
6212109040	0.2285	0.3357
6212200010	0.6854	1.0069
6212200020	0.2856	0.4196
6212200030	0.1142	0.1678
6212300010	0.6854	1.0069
6212300020	0.2856	0.4196
6212300030	0.1142	0.1678
6212900010	0.1828	0.2686
6212900020	0.1828	0.2686
6212900030	0.1828	0.2686
6212900050	0.0914	0.1343
6212900090	0.4112	0.6041
6213201000	1.1187	1.6435
6213202000	1.0069	1.4792
6213900700	0.4475	0.6574
6213901000	0.4475	0.6574
6213902000	0.3356	0.4930
6214300000	0.1142	0.1678
6214400000	0.1142	0.1678
6214900010	0.8567	1.2586
6214900090	0.2285	0.3357
6215100025	0.1142	0.1678
6215200000	0.1142	0.1678
6215900015	1.0281	1.5104
6216000800	0.0685	0.1006
6216001300	0.3427	0.5035
6216001720	0.6397	0.9398
6216001730	0.1599	0.2349
6216001900	0.3427	0.5035
6216002110	0.578	0.8491
6216002120	0.2477	0.3639
6216002410	0.6605	0.9703
6216002425	0.1651	0.2425
6216002600	0.1651	0.2425
6216002910	0.6605	0.9703
6216002925	0.1651	0.2425
6216003100	0.1651	0.2425
6216003300	0.5898	0.8665
6216003500	0.5898	0.8665
6216003800	1.1796	1.7330
6216004100	1.1796	1.7330
6217109510	0.9646	1.4171
6217109520	0.1809	0.2658
6217109530	0.2412	0.3543
6217909003	0.9646	1.4171
6217909005	0.1809	0.2658
6217909010	0.2412	0.3543
6217909025	0.9646	1.4171
6217909030	0.1809	0.2658
6217909035	0.2412	0.3543
6217909050	0.9646	1.4171
6217909055	0.1809	0.2658
6217909060	0.2412	0.3543
6217909075	0.9646	1.4171
6217909080	0.1809	0.2658
6217909085	0.2412	0.3543
6301300010	0.8305	1.2201
6301300020	0.8305	1.2201
6301900030	0.2215	0.3254
6302100005	1.1073	1.6267
6302100008	1.1073	1.6267
6302100015	1.1073	1.6267
6302213010	1.1073	1.6267

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302213020	1.1073	1.6267
6302213030	1.1073	1.6267
6302213040	1.1073	1.6267
6302213050	1.1073	1.6267
6302215010	0.7751	1.1387
6302215020	0.7751	1.1387
6302215030	0.7751	1.1387
6302215040	0.7751	1.1387
6302215050	0.7751	1.1387
6302217010	1.1073	1.6267
6302217020	1.1073	1.6267
6302217030	1.1073	1.6267
6302217040	1.1073	1.6267
6302217050	1.1073	1.6267
6302219010	0.7751	1.1387
6302219020	0.7751	1.1387
6302219030	0.7751	1.1387
6302219040	0.7751	1.1387
6302219050	0.7751	1.1387
6302221010	0.5537	0.8134
6302221020	0.3876	0.5694
6302221030	0.5537	0.8134
6302221040	0.3876	0.5694
6302221050	0.3876	0.5694
6302221060	0.3876	0.5694
6302222010	0.3876	0.5694
6302222020	0.3876	0.5694
6302222030	0.3876	0.5694
6302290020	0.2215	0.3254
6302313010	1.1073	1.6267
6302313020	1.1073	1.6267
6302313030	1.1073	1.6267
6302313040	1.1073	1.6267
6302313050	1.1073	1.6267
6302315010	0.7751	1.1387
6302315020	0.7751	1.1387
6302315030	0.7751	1.1387
6302315040	0.7751	1.1387
6302315050	0.7751	1.1387
6302317010	1.1073	1.6267
6302317020	1.1073	1.6267
6302317030	1.1073	1.6267
6302317040	1.1073	1.6267
6302317050	1.1073	1.6267
6302319010	0.7751	1.1387
6302319020	0.7751	1.1387
6302319030	0.7751	1.1387
6302319040	0.7751	1.1387
6302319050	0.7751	1.1387
6302321010	0.5537	0.8134
6302321020	0.3876	0.5694
6302321030	0.5537	0.8134
6302321040	0.3876	0.5694
6302321050	0.3876	0.5694
6302321060	0.3876	0.5694
6302322010	0.5537	0.8134
6302322020	0.3876	0.5694
6302322030	0.5537	0.8134
6302322040	0.3876	0.5694
6302322050	0.3876	0.5694
6302322060	0.3876	0.5694
6302390030	0.2215	0.3254
6302402010	0.9412	1.3827
6302511000	0.5537	0.8134
6302512000	0.8305	1.2201
6302513000	0.5537	0.8134
6302514000	0.7751	1.1387
6302593020	0.5537	0.8134

TABLE 2 TO PARAGRAPH (b)(3)—IM-
PORT ASSESSMENT TABLE—Contin-
ued

[Raw cotton fiber]

HTS No.	Conv. factor.	Cents/kg.
6302600010	1.1073	1.6267
6302600020	0.9966	1.4641
6302600030	0.9966	1.4641
6302910005	0.9966	1.4641
6302910015	1.1073	1.6267
6302910025	0.9966	1.4641
6302910035	0.9966	1.4641
6302910045	0.9966	1.4641
6302910050	0.9966	1.4641
6302910060	0.9966	1.4641
6302931000	0.4429	0.6507
6302932000	0.4429	0.6507
6302992000	0.2215	0.3254
6303191100	0.8859	1.3015
6303910010	0.609	0.8947
6303910020	0.609	0.8947
6303921000	0.2768	0.4066
6303922010	0.2768	0.4066
6303922030	0.2768	0.4066
6303922050	0.2768	0.4066
6303990010	0.2768	0.4066
6304111000	0.9966	1.4641
6304113000	0.1107	0.1626
6304190500	0.9966	1.4641
6304191000	1.1073	1.6267
6304191500	0.3876	0.5694
6304192000	0.3876	0.5694
6304193060	0.2215	0.3254
6304200020	0.8859	1.3015
6304200070	0.2215	0.3254
6304910120	0.8859	1.3015
6304910170	0.2215	0.3254
6304920000	0.8859	1.3015
6304996040	0.2215	0.3254
6505001515	1.1189	1.6438
6505001525	0.5594	0.8218
6505001540	1.1189	1.6438
6505002030	0.9412	1.3827
6505002060	0.9412	1.3827
6505002545	0.5537	0.8134
6507000000	0.3986	0.5856
9404401000	0.9966	1.4641
9404409005	0.6644	0.9761
9404409036	0.0997	0.1465
9404901030	0.2104	0.3091
9404901060	0.2104	0.3091
9404901090	0.2104	0.3091
9404908100	0.9966	1.4641
9404909605	0.6644	0.9761
9404909636	0.0997	0.1465
9619002100	0.8681	1.2753
9619002500	0.1085	0.1594
9619003100	0.9535	1.4008
9619003300	1.1545	1.6961
9619004100	0.2384	0.3502
9619004300	0.2384	0.3502
9619006100	0.8528	1.2528
9619006400	0.2437	0.3580
9619006800	0.3655	0.5370
9619007100	1.1099	1.6306
9619007400	0.2466	0.3623
9619007800	0.2466	0.3623
9619007900	0.2466	0.3623

* * * * *

Authority: 7 U.S.C. 2101–2118.

Melissa Bailey,
Associate Administrator, Agricultural
Marketing Service.

[FR Doc. 2023–17220 Filed 8–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2023–1467; Special
Conditions No. 25–840–SC]**Special Conditions: The Boeing
Company Model 737–10 Airplane;
Dynamic Test Requirements for Single
Occupant Oblique Seats With or
Without Airbags and/or 3-Point
Restraints**AGENCY: Federal Aviation
Administration (FAA), DOT.ACTION: Final special conditions; request
for comments.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 737–10 series airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is oblique (side-facing) single-occupant seats equipped with airbag devices or 3-point restraints. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Boeing on August 15, 2023. Send comments on or before September 29, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2023–1467 using any of the following methods:

- *Federal eRegulations Portal:* Go to <https://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 (DOT), 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 <https://www.regulations.gov/> at any time. Follow the online instructions for accessing the docket or go 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.

FOR FURTHER INFORMATION CONTACT: John Sheldon, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email John.Shelden@faa.gov.

SUPPLEMENTARY INFORMATION:

The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to 14 CFR 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to <https://www.regulations.gov/>, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to John Sheldon, Cabin Safety Section, AIR–624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3214; email John.Shelden@faa.gov. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Background

On October 28, 2022, Boeing applied for a change to Type Certificate No. A16WE for the installation of oblique (side-facing) passenger seats with or without airbag devices or 3-point restraints in the Boeing Model 737–10 series airplanes. The Boeing Model 737–10 series airplanes are twin-engine, transport category airplanes with a maximum certified passenger capacity of up to 230, and a maximum takeoff weight of approximately 197,900 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 737–10 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–10 series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–10 series airplane must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737–10 series airplane will incorporate a seating configuration that is novel or unusual due to the installation of oblique (side-facing) passenger seats and surrounding furniture that introduces occupant alignment and loading concerns. These oblique seats may be installed at an angle of 18 to 45 degrees to the aircraft centerline and may include a 3-point restraint system and/or airbags, for occupant restraint and injury protection.

Discussion

Title 14, Code of Federal Regulations (14 CFR) 25.785(d) requires that each occupant of a seat that makes more than an 18 degree angle with the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy absorbing rest that will support the arms, shoulders, head, and spine, or by a safety belt and shoulder harness that will prevent the head from contacting any injurious object.

The proposed Boeing Model 737–10 airplane seat installation is novel in that the current requirements do not adequately address protection of the occupant's neck and spine for seating configurations that are positioned at angles greater than 18 degrees up to and including 45 degrees from the airplane centerline. The installation of passenger seats at angles of 18 to 45 degrees to the airplane centerline is unique due to the seat/occupant interface with the surrounding furniture that introduces occupant alignment/loading concerns with or without the installation of a 3-point or airbag restraint system, or both.

In order to provide a level of safety that is equivalent to that afforded to occupants of forward and aft facing seating, additional airworthiness standards, in the form of new special conditions, are necessary.

The FAA has been conducting and sponsoring research on appropriate injury criteria for oblique (side-facing) seat installations. To reflect current research findings, the FAA issued policy statement PS-AIR-25-27. FAA-sponsored research has found that an unrestrained flailing of the upper torso, even when the pelvis and torso are nearly aligned, can produce serious spinal and torso injuries. At lower impact severities, even with significant misalignment between the torso and pelvis, these injuries did not occur. Tests with an FAA H-III anthropomorphic test dummy (ATD) have identified a level of lumbar spinal tension corresponding to the no-injury impact severity. This level of tension is included as a limit in the special conditions. The spine tension limit selected is conservative with respect to other aviation injury criteria since it corresponds to a no-injury loading condition.

As noted in the special conditions for each airbag restraint system, because an airbag restraint system is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag restraint system. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag restraint system useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the installation of the airbag restraint system should be such that the airbag restraint system will provide protection when it is required, and will not expend its protection when it is not needed.

Because these airbag restraint systems may or may not activate during various crash conditions, the injury criteria listed in these special conditions and in § 25.562 must be met in an event that is slightly below the activation level of the airbag restraint system. If an airbag restraint system is included with the oblique seats, the system must meet the requirements in one of the airbag (inflatable restraint) special conditions applicable to the Boeing Model 737 series airplanes. These special conditions supplement part 25 and,

more specifically, supplement §§ 25.562 and 25.785.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737-10 series airplane. Should Boeing apply at a later date for a change to the type certificate to include another model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for The Boeing Company Model 737-10 series airplanes.

In addition to the requirements of § 25.562, passenger seats installed at an angle between 18 degrees and 45 degrees from the aircraft centerline must meet the following:

1. Head Injury Criteria (HIC)

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test dummy (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a HIC unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

2. Body-to-Wall/Furnishing Contact

If a seat is installed aft of structure (e.g., interior wall or furnishings) that does not provide a homogenous contact surface for the expected range of

occupants and yaw angles, then additional analysis and tests may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag device performance, then additional analysis or separate tests may be necessary to evaluate performance.

3. Neck Injury Criteria

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The N_{ij} (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} critical values are:

- i. $F_{zc} = 1530$ lbs. for tension
- ii. $F_{zc} = 1385$ lbs. for compression
- iii. $M_{yc} = 229$ lb-ft in flexion
- iv. $M_{yc} = 100$ lb-ft in extension

b. In addition, peak F_z must be below 937 lbs. in tension and 899 lbs. in compression.

c. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

4. Spine and Torso Injury Criteria

a. The lumbar spine tension (F_z) cannot exceed 1200 lbs.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E filtered in accordance with SAE International (SAE) recommended practice J211/1, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation."

c. The occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Pelvis Criteria

Any part of the load-bearing portion of the bottom of the ATD pelvis must not translate beyond the edges of the

seat bottom seat-cushion supporting structure.

6. Femur Criteria

Axial rotation of the upper leg (about the z-axis of the femur per SAE Recommended Practice J211/1) must be limited to 35 degrees from the nominal seated position. Evaluation during rebound does not need to be considered.

7. ATD and Test Conditions

Longitudinal tests conducted to measure the injury criteria above must be performed with the FAA Hybrid III ATD, as described in SAE 1999-01-1609, "A Lumbar Spine Modification to the Hybrid III ATD for Aircraft Seat Tests." The tests must be conducted with an undeformed floor, at the most-critical yaw cases for injury, and with all lateral structural supports (e.g., armrests or walls) installed.

Note: Boeing must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in policy memorandum PS-ANM-100-2000-00123, "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets," dated February 2, 2000, is acceptable to the FAA.

8. Inflatable Airbag Restraint Systems Special Conditions

If inflatable airbag restraint systems are installed, the airbag systems must meet the requirements in special conditions 25-386-SC, or other airbag system special conditions which are applicable to the Boeing Model 737 series airplanes.

Issued in Des Moines, WA, on August 9, 2023.

Paul R. Siegmund,

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

[FR Doc. 2023-17403 Filed 8-14-23; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2023-1712; Project Identifier MCAI-2023-00821-A; Amendment 39-22523; AD 2023-16-04]

RIN 2120-AA64

Airworthiness Directives; Piaggio Aviation S.p.A. 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 Piaggio Aviation S.p.A. (Piaggio) Model P-180 airplanes. This AD was prompted by a report of corrosion-induced cracking on the horizontal tail trim actuator (HTTA) fitting assembly. This AD requires repetitively inspecting the HTTA fitting assembly for corrosion and cracking until the HTTA fitting assembly is replaced with a new part. The FAA is issuing this AD to address the unsafe condition on these products. **DATES:** This AD is effective August 30, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 30, 2023.

The FAA must receive comments on this AD by September 29, 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-2023-1712; 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 service information identified in this final rule, contact Piaggio Aero Industries S.p.A., P180 Customer Support, via Pionieri e Aviatori d'Italia, snc-16154 Genoa, Italy; phone: +39 331 679 74 93; email: technicalsupport@piaggioaerospace.it.

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222-5110. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1712.

FOR FURTHER INFORMATION CONTACT:

Mike Kiesov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329-4144; email: mike.kiesov@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-2023-1712; Project Identifier MCAI-2023-00821-A" 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 Mike Kiesov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. 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 European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023-0122R1, dated July 5, 2023

(referred to after this as the MCAI), to correct an unsafe condition on certain serial-numbered Piaggio Model P.180 airplanes. The MCAI states an occurrence was reported where, during scheduled maintenance, stress corrosion-induced cracking was found on the HTTA fitting assembly. The MCAI states that this type of corrosion can be found on older airplanes, based and operated for an extended period of time near the seaside, exposed to a salty environment, or parked outside in an environment of high humidity or frequent heavy precipitation.

To address the unsafe condition, the MCAI requires doing a high frequency eddy current inspection (HFEC) of the HTTA fitting assembly for corrosion and cracking and, depending on the findings, repeating the inspection and repairing any light corrosion, or replacing the HTTA fitting assembly with a new part. The MCAI states that replacing the HTTA fitting assembly terminates the repetitive inspections.

This condition, if not addressed, could result in structural failure of the HTTA fitting assembly and loss of control of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1712.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Piaggio Aerospace Service Bulletin 80–0492, Revision 3, dated June 12, 2023. This service information specifies procedures for doing an HFEC inspection of the HTTA fitting assembly for corrosion and taking corrective actions. The corrective actions include repeating the HFEC inspection, repairing light corrosion, and replacing the HTTA fitting assembly with a new part.

The FAA also reviewed Piaggio Aerospace Temporary Revision TR–031 to Chapter 51–70–70, dated May 29, 2023, to the Piaggio P.180 Structural Repair Manual. This service information specifies procedures for replacing the HTTA fitting assembly.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced 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 accomplishing the actions specified in the service information already described, except as discussed under "Differences Between this AD and the MCAI."

Differences Between This AD and the MCAI

The MCAI allows airplanes with corrosion or cracking in certain areas of the HTTA fitting assembly to continue flights and be repaired within 150 hours time-in-service or 7 months, whichever occurs first. This AD requires that airplanes with corrosion exceeding light corrosion or with cracking on any part of the HTTA fitting assembly be repaired before further flight.

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 corrosion on the HTTA fitting assembly could lead to cracking that, if not addressed, could result in structural failure of the HTTA fitting assembly and loss of control of the airplane. For certain airplanes, the initial HFEC inspection must be accomplished within 30 hours time-in-service or 60 calendar days after the effective date of this AD, whichever occurs first. This compliance time is shorter than the time necessary for the public to comment and for publication of the 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 103 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Initially inspect HTTA fitting assembly	55 work-hours × \$85 per hour = \$4,675	\$0	\$4,675	\$481,525
Report results	1 work-hour × \$85 per hour = \$85	0	85	8,755

The FAA estimates the following costs to do any necessary corrective action that would be required based on

the results of any inspection. The agency has no way of determining the

number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repetitively inspect HTTA fitting assembly	55 work-hours × \$85 per hour = \$4,675	0	\$4,675 per inspection cycle.
Report results	1 work-hour × \$85 per hour = \$85	0	\$85.
Repair light corrosion	1 work-hour × \$85 per hour = \$85	0	\$85 per inspection cycle.
Replace HTTA fitting assembly	13 work-hours × \$85 per hour = \$1,105	4,750	\$5,855.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177-1524.

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:

2023-16-04 Piaggio Aviation S.p.A.:
Amendment 39-22523; Docket No. FAA-2023-1712; Project Identifier MCAI-2023-00821-A.

(a) Effective Date

This airworthiness directive (AD) is effective August 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Piaggio Aviation S.p.A. Model P-180 airplanes, certificated in any category:

(1) Serial numbers (S/N) 1002, 1034 through 1234 inclusive, 3001 through 3014 inclusive, 3016, and 3018; and

(2) S/N 1004 through 1033 inclusive if modified in accordance with Piaggio Service Bulletin 80-0142.

(d) Subject

Joint Aircraft System Component (JASC) Code: 5520, Elevator Structure.

(e) Unsafe Condition

This AD was prompted by a report of corrosion-induced cracking on the horizontal tail trim actuator (HTTA) fitting assembly. The FAA is issuing this AD to address structural failure of the HTTA fitting assembly. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Definitions

(1) For purposes of this AD, "light corrosion" is corrosion that does not exceed a depth of 0.15 millimeter (mm) and does not extend beyond 1 square inch (645.2 square mm).

(2) For purposes of this AD, a "new part" is a part with zero hours time-in-service (TIS).

(h) Inspection

Within the compliance time for your airplane listed in Table 1 to paragraph (h) of this AD, do a high frequency eddy current inspection of HTTA fitting assembly part number (P/N) 80-363283-401 for corrosion and cracking in accordance with Section 2.B., Part A, Steps (11) through (14) of the Accomplishment Instructions in Piaggio Aerospace Service Bulletin 80-0492, Revision 3, dated June 12, 2023.

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Table 1 to paragraph (h) – Initial Inspection Compliance Time

Airplanes	Compliance Time
Airplanes that have accumulated less than 3,000 hours TIS and less than 10 years since the date of issuance of the original airworthiness certificate or original export certificate of airworthiness.	Within 140 hours TIS or 8 months after the effective date of this AD, whichever occurs first.
All other airplanes.	Within 30 hours TIS or 60 days after the effective date of this AD, whichever occurs first.

(i) Corrective Actions

Based on the result of the inspection required by paragraph (h) of this AD, do the

applicable corrective action within the applicable compliance time specified in Table 2 to paragraph (i) of this AD.

Table 2 to paragraph (i) – Corrective Actions and Compliance Time

Finding	Compliance Time	Corrective Action
No corrosion and no cracking	Not applicable	Repeat inspection in paragraph (h) of this AD at intervals not to exceed 660 hours TIS or 26 months, whichever occurs first.
Light corrosion and no cracking	Before further flight	Repair light corrosion and repeat inspection in paragraph (h) of this AD at intervals not to exceed 660 hours TIS or 26 months, whichever occurs first.
Corrosion exceeding light corrosion or cracking on any part of the HTTA fitting assembly	Before further flight	Replace the HTTA fitting assembly with a new part in accordance with Piaggio Aerospace Temporary Revision TR-031 to Chapter 51-70-70, dated May 29, 2023, to the Piaggio P.180 Structural Repair Manual.

BILLING CODE 4910-13-C**(j) Terminating Action**

Replacing the HTTA fitting assembly with a new part in accordance with Piaggio Aerospace Temporary Revision TR-031 to Chapter 51-70-70, dated May 29, 2023, to the Piaggio P.180 Structural Repair Manual constitutes terminating action for the

repetitive inspections required by paragraph (i) of this AD for that airplane.

(k) Credit for Previous Action

You may take credit for the initial inspection required by paragraph (h) of this AD if you performed the initial inspection before the effective date of this AD using

Piaggio Aerospace Service Bulletin 80-0492, Revision 2, dated May 15, 2023.

(l) Reporting Requirement

Report to the manufacturer the results of each inspection required by paragraphs (h) and (i) of this AD within the applicable compliance time specified in paragraph (l)(1) or (2) of this AD using the Confirmation Slip

attached to Piaggio Aerospace Service Bulletin 80–0492, Revision 3, dated June 12, 2023.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(m) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (n)(2) of this AD or email to: 9-AVS-AIR-730-AMOC@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 local flight standards district office.

(n) Additional Information

(1) Refer to European Union Aviation Safety Agency (EASA) AD 2023–0122R1, dated July 5, 2023, for related information. This EASA AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2023–1712.

(2) For more information about this AD, contact Mike Kiesov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (816) 329–4144; email: mike.kiesov@faa.gov.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (4) of this AD.

(o) 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 the AD specifies otherwise.

(i) Piaggio Aerospace Service Bulletin 80–0492, Revision 3, dated June 12, 2023.

(ii) Piaggio Aerospace Temporary Revision TR–031 to Chapter 51–70–70, dated May 29, 2023, to the Piaggio P.180 Structural Repair Manual.

(3) For service information identified in this AD, contact Piaggio Aero Industries S.p.A., P180 Customer Support, via Pionieri e Aviatori d'Italia, snc-16154 Genoa, Italy; phone: +39 331 679 74 93; email: technicalsupport@piaggioaerospace.it.

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information 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 August 8, 2023.

Victor Wicklund,

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

[FR Doc. 2023–17575 Filed 8–11–23; 4:15 pm]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2017–0042]

RIN 0960–AG65

Revised Medical Criteria for Evaluating Digestive Disorders and Skin Disorders

Correction

In Rule Document 2023–11771, appearing on pages 37704 through 37747 in the issue of Thursday, June 8, 2023, make the following correction:

- 1. On page 37740, in the first column, after line 43 of Part 404, Appendix 1 to Subpart P, is corrected as set forth below.

* * * * *

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–) [Corrected]

* * * * *

Subpart P—Determining Disability and Blindness

* * * * *

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

(a) The initial calculation is:

SSA CLDi =

$9.57 \times [\log_e (\text{serum creatinine mg/dL})]$

$+ 3.78 \times [\log_e (\text{serum total bilirubin mg/dL})]$

$+ 11.2 \times [\log_e (\text{INR})]$

$+ 6.43$

rounded to the nearest whole integer

* * * * *

[FR Doc. C1–2023–11771 Filed 8–14–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Parts 502, 556, and 558

RIN 3141–AA32

Definitions; Background Investigation for Primary Management Officials and Key Employees; Gaming Licenses for Primary Management Officials and Key Employees

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Final rule.

SUMMARY: In April 2023, the Commission issued a revised proposed rule refining proposed changes to the “primary management official” and “key employee” definitions as well as the newly proposed definitions for “Gaming Enterprise” and “Tribal Gaming Regulatory Authority” (TGRA). The revised proposal, like the 2022 original, also proposed: modernizing retention requirements for background investigations and licensing applications; vesting revocation hearing rights upon license issuance as well as in accordance with tribal law, regulation, or policy; and augmenting revocation decision notification and submission requirements. After closely considering comments received, this final rule permits tribes to designate other gaming enterprise employees as key employees and other employed gaming enterprise management officials as primary management officials, including TGRA personnel. These optional designations occur by any documentary means. Further, the key employee definition no longer sets forth a wage threshold but includes in the definition a gaming operation’s four most highly compensated persons. And the terms “independent” and “governmental” have been struck from the TGRA definition, aligning it with a corresponding definition in NIGC regulations, part 547. Lastly, license revocation decisions only require notifying the Commission of the revocation along with a copy of the revocation decision.

DATES: Effective September 14, 2023.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Shyloski, National Indian Gaming Commission, 1849 C Street NW, MS 161, Washington, DC 20240. Telephone: (202) 632–7003. Email: Jo-Ann.Shyloski@nigc.gov. Fax: (202) 632–7066.

SUPPLEMENTARY INFORMATION:

I. Background and Development of the Rule

A. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. IGRA requires that tribal gaming ordinances provide a system for: background investigations of “primary management officials and key employees of the gaming enterprise;” tribal licenses for them; a suitability standard to assess whether they pose a threat to gaming and are not eligible for employment; and notices of background check results to the Commission before the issuance of licenses.

The Commission first defined “key employee” and “primary management official” in April of 1992, early in its existence. As mandated by IGRA, applicants for key employee and primary management official positions are subject to a background investigation as a condition of licensure. In 2009, the Commission expanded these definitions to permit tribes to designate other persons as key employees or primary management officials (74 FR 36926). The FBI, U.S. Department of Justice, took issue with this expansion, denying the processing of CHRI for the expanded positions’ background investigations. This final rule rectifies this issue in part 502, as it now limits tribal designations to “[a]ny other employee of the gaming enterprise as documented by the tribe as a key employee” and “[a]ny other employed management official of the gaming enterprise documented by the tribe as a primary management official.”

Background investigation and licensing regulations for key employees and primary management officials were initially issued by the Commission in January 1993 (58 FR 5802–01) in parts 556 and 558, respectively. The Commission updated these regulations in 2013 to streamline the submission of documents; to ensure that two notifications are submitted to the Commission in compliance with IGRA; and to clarify the regulations regarding the issuance of temporary and permanent gaming licenses (78 FR 5276–01). This final rule modernizes retention requirements for background investigations and licensing applications; vests revocation hearing rights upon license issuance as well as in accordance with tribal law, regulation, or policy; and augments

revocation decision notification and submission requirements. The rule also revises the “primary management official” and “key employee” definitions and creates new definitions for “Gaming Enterprise” and “Tribal Gaming Regulatory Authority” (TGRA). Importantly, the rule allows tribes to designate other gaming enterprise employees as key employees and other employed gaming enterprise management officials as primary management officials, including TGRA personnel.

B. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on numerous topics, including proposed changes to the key employee and primary management definitions and the backgrounding and licensing regulations. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendments to these regulations were intended to: address the FBI’s concerns regarding the key employee and primary management official definitions; include gaming operation employees with unescorted access to secured areas as key employees; combine certain subsections of the key employee definition; add general managers and similar positions to the primary management official definition; and update licensing application retention requirements. The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes.

The Commission reviewed all comments received as part of the consultation process and addressed them in the initial proposed rule, issued on August 10, 2022. Again, the Commission thoroughly reviewed comments from the initial proposed rule, modified its proposal considering them, and issued a revised proposed rule on April 14, 2023.

II. Review of Public Comments

The Commission received the following comments in response to our Revised Notice of Proposed Rulemaking.

Comment: Four commenters support the Commission’s removal of the wage threshold in the key employee definition, because such threshold: (1) is not tied to an employee’s duties and responsibilities, (2) does not enhance safeguarding gaming, (3) is overly broad, and (4) creates an unnecessary administrative burden, including needless time and expense of licensing

employees who may not perform gaming related functions. Two commenters disagree with the removal, as it provides authority to background a greater number of employees whose responsibilities are reflected in their compensation.

Response: Given the difference of opinion between tribes, the Commission agrees that the wage threshold of \$50,000 per year for a key employee is not duty, function, or responsibility related, which may result in overly broad and unnecessary licensures. Nonetheless, the Commission retained “the four most highly compensated persons” by the gaming operation in the definition if such persons are not otherwise licensed as a key employee or a primary management official.

Comment: One commenter welcomes the clarification in 25 CFR 502.14(a), the key employee definition, that the functions outlined apply only to people who undertake them on behalf of the gaming operation.

Response: The Commission appreciates the comment.

Comment: A commenter agrees with including in the key employee definition: “any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the TGRA.”

Response: The Commission appreciates the comment.

Comment: One commenter expressed concern regarding the change in the key employee definition from “the four most highly compensated persons in the gaming operation” to “the four persons most highly compensated by the gaming operation.” The commenter believes that such change may capture individuals who are paid by the gaming facility but do not work for the facility or serve a gaming related function.

Response: The Commission intends that “the four persons most highly compensated by the gaming operation” include gaming operation employees. And, certainly, it would be a rare instance for these individuals not to work for the facility or serve a gaming related function.

Comment: Two commenters support the inclusion of “any other employee of the gaming enterprise as documented by the tribe as a key employee” in the key employee definition as it enhances risk management, allowing the addition of other enterprise employees when documented.

Response: The Commission appreciates the comments.

Comment: One commenter objects to adding custodian of surveillance systems or surveillance system records

to the key employee definition, because surveillance is a tribal regulatory function and including it within the definition contradicts the regulatory body's independence.

Response: The commenter's concerns have no basis since the key employee definition limits custodians of surveillance systems or surveillance system records to only those persons who perform these functions for the gaming operation, not a tribal regulatory body.

Comment: One commenter suggests revising section (a) of the primary management definition, 25 CFR 502.19—changing “any person having management responsibility for a management contract” to “any person having management responsibility pursuant to a management contract.”

Response: This is the first time this recommendation was made. It was not contained in the Commission's original proposal nor raised by the commenter after the initial 2021 consultation proposal, 2021 consultations, or the original 2022 proposed rule. Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

Comment: Two commenters expressed concern that 25 CFR 502.19(b) of the primary management official definition—“[a]ny person who has authority: (1)[t]o hire and fire employees of the gaming operation; or (2) [t]o establish policy for the gaming operation”—includes TGRA personnel.

Response: Under NIGC definitions, TGRAs and their personnel come within the definition of “Gaming Enterprise,” not “Gaming Operation.” “Gaming Enterprise” encompasses the entity through which a tribe regulates gaming, whereas “gaming operation” is limited to “each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses.” Therefore, 25 CFR 502.19(b) of the primary management official definition does not include TGRA personnel.

Comment: Another commenter is concerned that one aspect of the primary management official definition, 25 CFR 502.19(b)(1)—“[a]ny person who has authority: (1)[t]o hire and fire employees of the gaming operation”—is based on structure instead of function and mandates licensing any management position that can hire or fire any employee regardless of whether the position has any gaming related responsibility.

Response: The Commission disagrees. Hiring and firing gaming operation employees constitutes a function, duty, or responsibility. And it would be the rare exception rather than the rule for the person with authority to hire and fire gaming operation employees not to have any gaming related responsibility.

Comment: Two commenters appreciate the inclusion in the primary management official definition of “[a]ny other employed management official of the gaming enterprise as documented by the tribe.”

Response: The Commission values these comments.

Comment: One commenter supports the inclusion of the “Gaming Enterprise definition.”

Response: The Commission appreciates the comment.

Comment: Two commenters strongly believe that IGRA only intended licensing requirements pertain to gaming operation employees, not tribal regulators. And the commenter is afraid that “such an arrangement, wherein TGRA employees may be required to hold key employee licenses, would disrupt key tribal governmental structures”

Response: The commenters misunderstand this rule. Under it, TGRA employees are not required to possess key employee licenses. Only if a tribe chooses to document TGRA employees as key employees will they come within the key employee definition.

Comment: A commenter contends that the Gaming Enterprise definition “conflicts with the requirement that a [TGRA] serves out its independent and distinct role separate from the Gaming Enterprise.”

Response: The Commission disagrees. The Gaming Enterprise definition is meant to encompass the entities necessary to conduct, regulate, and secure a tribe's gaming on Indian lands, including the TGRA. Such definition, however, should not interfere with a TGRA's independence and distinct role in regulating a tribe's gaming.

Comment: One commenter asserts that it is unclear how the Gaming Enterprise definition differs from the Gaming Operation definition.

Response: The definitions are distinguishable: “Gaming operation” is defined as “each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses.” Whereas “Gaming Enterprise” “means the entities through which a tribe conducts, regulates, and secures gaming on Indian lands within such tribe's jurisdiction” So, Gaming Enterprise

comprises more than just gaming operations, including TGRAs, Security, and IT entities.

Comment: Two commenters maintain that the “Gaming Enterprise” definition is too broad because of its inclusion of TGRAs and possible inclusion of tribal governmental entities that secure gaming through the approval of contracts.

Response: As stated previously, “Gaming Enterprise” “means the entities through which a tribe conducts, regulates, and secures gaming on Indian lands within such tribe's jurisdiction pursuant to the Indian Gaming Regulatory Act.” In the definition, the Commission intends to include TGRAs as well as tribal entities that ensure the gaming's risk from loss or protect the gaming from exposure to danger. The potential inclusion of governmental entities that secure gaming through the approval of contracts was not the Commission's intent, but their inclusion causes no harm nor creates any obligation on them, unless a tribe chooses to document certain of their employees as key employees or primary management officials.

Comment: One commenter requested that the “Gaming Enterprise” definition be modified to mean “the business enterprise that operates gaming on Indian lands within a tribe's jurisdiction pursuant to the Indian Gaming Regulatory Act.”

Response: As an initial matter, the commenter's proposal is quite like the Commission's with the exception that the commenter defines Gaming Enterprise as a “business enterprise” that “operates gaming.” The purpose of a definition is to explain a term's meaning using other terms that are clear and/or commonly known. The Commission's definition for Gaming Enterprise does just that, whereas, the commenter's definition uses the same exact terms, defining gaming enterprise as a business enterprise. Further, the Commission intends for the definition to mean more than just the entity that operates gaming, also incorporating the entities that regulate and secure gaming on Indian lands. For these reasons, the Commission rejects the comment.

Comment: Two commenters support the definition of “Tribal Gaming Regulatory Authority (TGRA).”

Response: The Commission appreciates the comments.

Comment: One commenter recommends striking the term “independent” from the TGRA definition since the term is not defined in IGRA or NIGC regulations. Additionally, TGRA is already defined in part 547 of NIGC regulations and

does not contain the term “independent.”

Response: The Commission accepts the comment, ensuring that the definitions of TGRA correspond in NIGC regulations parts 502 and 547.

Comment: One commenter generally supports the changes to part 556.

Response: The Commission appreciates the comment.

Comment: One commenter finds that the proposed change to 25 CFR 558.3(c) is helpful since it clarifies the scope of duties that a key employee or primary management official may carry out during the ninety-day period.

Response: The Commission agrees and appreciates the comment.

Comment: One commenter suggests a new change to 25 CFR 558.3(d)(2), which requires tribes to forward a copy of its eligibility determination and notice of results to the Commission when it does not license a key employee or primary management official applicant. The commenter is concerned that this process may capture applicants who are not licensed for reasons other than being found unsuitable and who may not have an eligibility determination. Such circumstance occurs when an applicant withdraws their application before an eligibility determination is completed.

Response: This is the first instance of such a concern being raised. It was not conveyed to the Commission after the initial 2021 consultation proposal, the 2021 consultations, or the original 2022 proposed rule. Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

Comment: One commenter is generally supportive of the proposed changes to 25 CFR 558.3(e).

Response: The Commission appreciates the comment.

Comment: Two commenters, however, strongly oppose the proposed changes to 25 CFR 558.3(e)—requiring submission of license revocation decisions and summaries of evidence relied upon—as unnecessary and unduly burdensome. The commenters claim that IGRA provides the Commission with a limited role in tribal licensing decisions, allowing it the authority to object to their issuance, and no role in license revocation matters. Further, the commenters believe the Commission already collects information sufficient to achieve the purpose here, including a detailed report on the status of licenses an applicant holds, formerly held, or has applied for. Additionally, the

commenters emphasize that revocation evidence summaries may be extensive (tens or hundreds of pages long) given the extent of evidentiary material, placing temporal and monetary obligations on TGRAs and the Commission that are better used elsewhere.

Response: The Commission disagrees. IGRA requires the Commission to ensure there is an adequate system not only for the background investigations of key employees and primary management officials but also continued oversight of such employees and officials on an ongoing basis. Consequently, these individuals’ activities and criminal records require continuous assessment. Notification of license revocations are an essential component of this continuous assessment. Tribal revocations are not contained in other background checks, including FBI CHRI. Such information further safeguards Indian gaming by guaranteeing the Commission is aware of and possesses the most up-to-date licensing information on key employees and primary management officials, which the Commission uses not only for licensing objections but also to assist tribes with their background investigations. As for the submission of license revocation evidence summaries, a summary of evidence is not the same as submission of actual evidence. Nevertheless, given the concerns of an undue burden, the proposal to submit revocation evidence summaries is removed.

Comment: Two commenters welcome the proposed change to 25 CFR 558.4(d), recognizing that a right to a revocation hearing vests not only upon receipt of a license but also at such earlier time as is determined by tribal law, regulation, and/or policy.

Response: The Commission appreciates the comments.

Comment: One commenter suggests a new, additional change to 25 CFR 558.4(e), to ask the Commission to consider flexibility in the 45-day deadline to advise the Commission of a revocation decision.

Response: This is the first time this recommendation was made. It was not proposed by the Commission, nor was it raised by the commenter after the initial 2021 consultation proposal, the 2021 consultations, or the original 2022 proposed rule. Consequently, other parties in the regulated community have not had an opportunity to comment on the recommendation. For these reasons, the Commission rejects the recommendation.

III. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501, *et seq.*, provides that 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. Collections of information include any request or requirement that persons obtain, maintain, retain, or report information to an agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). This rule contains new information collection requirements at 25 CFR 558.3(e) that are subject to review by OMB under the PRA and, accordingly, have been submitted to OMB for review under the PRA, Section 3507(d). OMB previously reviewed and approved information collection relating to 25 CFR 558.3 and assigned OMB control number 3141-0003 (expires 6/30/2023).

Described below are the proposed rule's information collection activities along with estimates of their annual burdens. These activities, along with annual burden estimates, do not include activities that are usual and customary industry practices. The burden estimates comprise the time necessary for Tribes to forward to the NIGC copies of their license revocation decisions unless they already submit such to the NIGC in the usual course of their business.

The Commission requests comment on all aspects of this information collection, including:

- a. 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;
- b. The accuracy of the estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- c. Ways to enhance the quality, utility, and clarity of the information to be collected; and
- d. How the agency might minimize the burden of the collection of information on those required to respond, including by appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

2. Summary of Proposed Information Collection Requirements and Burden Estimates

Title of Collection: Class II and Class III/Background Investigation Tribal Licenses.

OMB Control Number: 3141-0003.

Form Number: None.

Type of Review: New rule with added collection burden.

Respondents/Affected Public: Tribal gaming operations of Indian Tribes that conduct Class II and/or Class III gaming

under the Indian Gaming Regulatory Act.

Respondent's Obligation: Mandatory.
Frequency of Collection: On occasion.

The new rule proposed under 25 CFR 558.3(e) will create the following estimated burdens:

Total Estimated Number of Annual Responses: 100.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 100 hours.

Total Estimated Annual Non-Hour Burden Cost: None.

3. Written Comments or Additional Information

Written comments and suggestions on the information collection requirements should be submitted by September 14, 2023. Submit comments directly to OMB's Office of Information and Regulatory Affairs, Attn: Policy Analyst/Desk Officer for the National Indian Gaming Commission. Comments also may be emailed to *OIRA_Submission@omb.eop.gov*, by including reference to "NIGC PRA Renewals" in the subject line.

To request additional information about this ICR, contact Tim Osumi, Privacy & Records Information Manager, NIGC Information Management Program by email at *tim.osumi@nigc.gov* or by telephone at (202) 264-0676.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy, published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed

changes to the key employee and primary management official regulatory definitions as well as the background and licensing regulations. Consultations were held on July 27 and 28, 2021. A proposed rule was issued on August 10, 2022, and a revised proposed rule was issued on April 14, 2023.

List of Subjects in 25 CFR Parts 502, 556, and 558

Gambling, Indian lands.

Therefore, for reasons stated in the preamble, 25 CFR parts 502, 556, and 558 are amended as follows:

PART 502—DEFINITIONS OF THIS CHAPTER

- 1. The authority citation for part 502 continues to read as follows:

Authority: 25 U.S.C. 2701 *et seq.*

- 2. Revise § 502.14 to read as follows:

§ 502.14 Key employee.

Key employee means:

- (a) Any person who performs one or more of the following functions for the gaming operation:
 - (1) Bingo caller;
 - (2) Counting room supervisor;
 - (3) Chief of security;
 - (4) Floor manager;
 - (5) Pit boss;
 - (6) Dealer;
 - (7) Croupier;
 - (8) Approver of credit;
 - (9) Custodian of gaming systems as defined in 25 CFR 547.2 and similar class III systems, gaming cash or gaming cash equivalents, gaming supplies or gaming system records;
 - (10) Custodian of surveillance systems or surveillance system records.
- (b) Any gaming operation employee authorized by the gaming operation for unescorted access to secured gaming areas designated as secured gaming areas by the TGRA;
- (c) If not otherwise licensed as a key employee or primary management official, the four persons most highly compensated by the gaming operation;
- (d) Any other employee of the gaming enterprise as documented by the tribe as a key employee.

- 3. Revise § 502.19 to read as follows:

§ 502.19 Primary management official.

Primary management official means:

- (a) Any person having management responsibility for a management contract;
- (b) Any person who has authority:
 - (1) To hire and fire employees of the gaming operation; or
 - (2) To establish policy for the gaming operation.

(c) The chief financial officer or a position with duties similar to a chief financial officer.

(d) The general manager or a position with duties similar to a general manager.

(e) Any other employed management official of the gaming enterprise as documented by the Tribe as a primary management official.

■ 4. Add §§ 502.25 and 502.26 to read as follows:

§ 502.25 Gaming Enterprise.

Gaming Enterprise means the entities through which Tribe conducts, regulates, and secures gaming on Indian lands within such tribe's jurisdiction pursuant to the Indian Gaming Regulatory Act.

§ 502.26 Tribal Gaming Regulatory Authority (TGRA).

Tribal Gaming Regulatory Authority (TGRA) means the entity authorized by Tribal law to regulate gaming conducted pursuant to the Indian Gaming Regulatory Act.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

■ 5. The authority citation for part 556 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 6. Amend § 556.4 by revising the introductory text to read as follows:

§ 556.4 Background investigations.

A Tribe shall perform a background investigation for each primary management official and for each key employee of the gaming enterprise.

* * * * *

■ 7. Amend § 556.6 by revising paragraph (a) to read as follows:

§ 556.6 Report to the Commission.

(a) When a Tribe licenses a primary management official or a key employee, the Tribe shall maintain the information listed under § 556.4(a)(1) through (14).

* * * * *

■ 8. Revise § 556.8 to read as follows:

§ 556.8 Compliance with this part.

All tribal gaming ordinances and ordinance amendments approved by the Chair prior to September 14, 2023 do not need to be amended to comply with this part. All future ordinance submissions, however, must comply.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

■ 9. The authority citation for part 558 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2712.

■ 10. Revise § 558.3 to read as follows:

§ 558.3 Notification to NIGC of license decisions and retention obligations.

(a) After a tribe has provided a notice of results of the background check to the Commission, a tribe may license a primary management official or key employee.

(b) Within 30 days after the issuance of the license, a tribe shall notify the Commission of its issuance.

(c) A key employee or primary management official who does not have a license after ninety (90) days shall not be permitted to perform the duties, functions, and/or responsibilities of a key employee or primary management official until so licensed.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) Shall forward copies of its eligibility determination and notice of results, under § 556.6(b)(2) of this chapter, to the Commission for inclusion in the Indian Gaming Individuals Record System.

(e) If a tribe revokes a key employee or primary management official's license—

(1) The tribe shall notify the Commission; and

(2) Shall forward copies of its license revocation decision for inclusion in the Indian Gaming Individuals Record System.

(f) A tribe shall retain the following for inspection by the Chair or their designee for no less than three years from the date of termination of employment:

(1) The information listed under § 556.4(a)(1) through (14) of this chapter;

(2) Investigative reports, as defined in § 556.6(b) of this chapter;

(3) Eligibility determinations, as defined in § 556.5 of this chapter;

(4) Privacy Act notice, as defined in § 556.2 of this chapter; and

(5) False Statement notice, as defined in § 556.3 of this chapter.

■ 11. Revise § 558.4 to read as follows:

§ 558.4 Notice of information impacting eligibility and licensee's right to a hearing.

(a) If, after the issuance of a gaming license pursuant to § 558.3, the Commission receives reliable

information indicating that a key employee or a primary management official is not eligible for a license under § 556.5 of this chapter, the Commission shall notify the issuing tribe of the information.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall immediately suspend the license and shall provide the licensee with written notice of suspension and proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) The right to a revocation hearing shall vest upon receipt of a license or at such earlier time as is determined by tribal law, regulation, and/or policy.

(e) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision within 45 days of receiving notification from the Commission pursuant to paragraph (a) of this section.

■ 12. Revise § 558.6 to read as follows:

§ 558.6 Compliance with this part.

All tribal gaming ordinances and ordinance amendments that have been approved by the Chair prior to September 14, 2023, and that reference this part do not need to be amended to comply with this section. All future ordinance submissions, however, must comply.

Edward Simermeyer,
Chairman.

Jean Hovland,
Vice Chair.

[FR Doc. 2023–17455 Filed 8–14–23; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0648]

RIN 1625–AA00

Safety Zone; Ohio River, Mile Markers 46 to 46.5, St. Albans, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the City of Nitro Labor Day Fireworks Display occurring on September 3, 2023, on the Kanawha River, Nitro, WV. The safety zone will cover all navigable waters between mile marker 46 and 46.5

to protect personnel, vessels, and the marine environment from potential hazards associated with a fireworks event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 9 through 10 p.m. on September 3, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0648 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Chelsea Zimmerman, Marine Safety Unit Huntington, U.S. Coast Guard, telephone 304–733–0198, email Chelsea.M.Zimmerman@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. A safety zone is needed to alleviate safety concerns associated with a fireworks display. It is impracticable to publish an NPRM because we must establish this safety zone by September 3, 2023, and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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 and contrary to the public interest because we must establish the safety zone by September 3, 2023 in order to protect personnel, vessels, and the marine environment from the potential safety hazards associated with a fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Ohio Valley (COTP) has determined that safety needs associated with the City of Nitro Labor Day Fireworks Display on September 3, 2023, present a safety concern. The purpose of this rulemaking is to ensure the safety of the public surrounding regulated area before, during, and after the fireworks event.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 9 until 10 p.m. on September 3, 2023. The safety zone will cover all navigable waters between mile markers 46 to 46.5 on the Kanawha River. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Ohio Valley (COTP) in the enforcement of the safety zone.

Persons or vessels seeking to enter the safety zone must request permission from the COTP on VHF–FM channel 16 or by telephone at 1–502–779–5424. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. This rule is limited to the Kanawha River from mile 46 to 46.5 on September 3, 2023, and will be enforced only for a one-hour duration. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the area.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone lasting only one hour on the Kanawha River at mile 41.5 to 42.5 on September 3, 2023. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T08-0648 to read as follows:

§ 165.T08-0648 Safety Zone; Kanawha River, Mile Markers 46 to 46.5, St. Albans, WV.

(a) *Location.* The following area is a safety zone: all navigable waters of the Kanawha River from mile marker 46 to mile marker 46.5, extending the entire width of the river.

(b) *Definitions.* *Designated representative* means a Coast Guard Patrol Commander (PATCOM), including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting

the Captain of the Port Ohio Valley (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative. The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander.

(2) To seek permission to enter, the COTP or the COTP's representative may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM", or phone at 1-502-779-5424. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(3) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(5) The COTP will provide notice of the regulated area through advanced notice via local notice to mariners and broadcast notice to mariners and by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 9 to 10 p.m. on September 3, 2023.

Dated: August 3, 2023.

H.R. Mattern,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2023-17491 Filed 8-14-23; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2023-0669]

RIN 1625-AA00

Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI—Emergency Operations and Port Recovery

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for

the navigable waters in the vicinity of Lahaina Boat Basin, Maui, Hawaii. The temporary safety zone encompasses all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with ongoing emergency response and port recovery operations after wildfires affected the area. Entry of vessels or persons in this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu.

DATES: This rule is effective without actual notice from August 15, 2023, through 11:59 p.m. on August 23, 2023. For the purposes of enforcement, actual notice will be used from 11 a.m. on August 9, 2023 until August 15, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0669 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Wade Thomson, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541–2359 or Wade.P.Thomson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On August 9, 2023, high winds and wildfires struck portions of Maui, Hawaii, causing damage to coastal infrastructure and prompting mass rescue operations for area residents.

On August 9, 2023, the Coast Guard issued a temporary rule to establish a safety zone for all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui, to protect personnel, vessels, and the marine environment from potential hazards associated with emergency response and port recovery operations after wildfires affected the area.

The Coast Guard is issuing this temporary rule without prior notice and

opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to facilitate an emergency salvage operation. Due to the numerous threats to safety posed by uncontrolled wildfires, timely emergency response efforts do not allow for public comment, and therefore publishing a NPRM is impracticable and contrary to public interest.

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 respond to the potential safety, navigational and environmental hazards associated with emergency response to Lahaina, Maui, area wildfires.

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). August 9, 2023, the Coast Guard was informed of damage, pollution, and debris in the vicinity of Lahaina Boat Basin, Maui, Hawaii. The Coast Guard COTP Sector Honolulu has determined that the potential hazards associated with the emergency response and port recovery efforts connected to wildfires in the area constitute a safety concern for anyone within the designated safety zone. This rule is necessary to protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during ongoing emergency response and port recovery operations.

IV. Discussion of the Rule

This rule is effective from August 9, 2023 at 11 a.m. through August 23, 2023 at 11:59 p.m., or until emergency response and port recovery operations are complete, whichever is earlier. If the safety zone is terminated prior to 11:59 p.m. on August 23, 2023, the Coast Guard will provide notice via a broadcast notice to mariners. The temporary safety zone encompasses all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili

Point, Maui. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with ongoing emergency response and port recovery operations after wildfires affected the area. No vessel or person will be permitted to enter the safety zone absent the express authorization of the COTP or his designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration, of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the navigable waters off the shores of Lahaina, Maui, Hawaii. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

request to enter the zone by contacting the COTP.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 14 days, or until operations are complete, that will prohibit entry into all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T14–00669 to read as follows:

§ 165.T14–00669 Safety Zone; Pacific Ocean, Lahaina Boat Basin, Maui, HI—Emergency Operations and Port Recovery.

(a) *Location.* The following area is a safety zone: All waters all waters extending 1 nautical mile from shore starting from the northernmost point of Kekaa Point, Maui, thenceforth to the southernmost point at Hekili Point, Maui. This zone extends from the surface of the water to the ocean floor.

(b) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) *Regulations.*

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

(2) To seek permission to enter, contact the COTP at the Command Center telephone number (808) 842–2600 and (808) 842–2601, fax (808) 842–2642 or on VHF channel 16 (156.8 Mhz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Dated: August 9, 2023.

A.L. Kirksey,
Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2023–17459 Filed 8–14–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–USCG–2023–0664]

RIN 1625–AA00

Safety Zone, Upper Mississippi River MM 660.5–659.5, Lansing, IA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters in the Upper Mississippi River at Mile Marker (MM)

660.5 through 659.5. The safety zone is needed to protect personnel, vessels, and the marine environment from all potential hazards associated with the implosion of the Lansing Power Station. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative.

DATES: This rule is effective from August 18, 2023, through August 31, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2023–0664 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Nathaniel Dibley, Sector Upper Mississippi River Waterways Management Division, U.S. Coast Guard; telephone 314–269–2560, email Nathaniel.D.Dibley@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because a temporary safety zone must be established immediately to protect personnel, vessels, and the marine environment from potential hazards created by the use of explosives for the implosion of the power plant and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. It is impracticable to publish an NPRM because we must establish this safety zone by August 18, 2023.

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 action is needed to respond to the potential safety hazards associated with the use of explosives for the implosion of the Lansing Power Station starting August 18, 2023.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the use of explosions for the implosion of the Lansing Power Plant will be a safety concern for anyone operating or transiting within the Upper Mississippi River from MM 660.5 through 659.5. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the implosion is being conducted.

IV. Discussion of the Rule

The implosion event will be occurring on two dates in which explosives will be used on an implosion of the Lansing Power Plant located between MM 660.5–659.5 beginning August 18, 2023. The safety zone is designed to protect waterway users until work is complete.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River. To seek permission to enter, contact the COTP or a designated representative via VHF–FM channel 16, or through USCG Sector Upper Mississippi River at 314–269–2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative. The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in the size of the safety zone through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB), as appropriate.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone would impact a small designated area located on the Upper Mississippi River at MM 660.5–659.5, near Lansing, IA. The Safety Zone is expected to be active only during the implosion events, from August 18 until August 31, 2023. Vessel traffic will be able to safely transit around this safety zone when the safety zone is not enforced.

B. Impact on Small Entities

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

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

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

person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone encompassing the width of the Upper Mississippi River at MM 660.5-659.5. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

- 2. Add § 165.T08-0664 to read as follows:

§ 165.T08-0664 Safety Zone; Upper Mississippi River, Mile Markers 660.5-659.5, Lansing, IA.

(a) *Location.* The following area is a safety zone: all navigable waters within Upper Mississippi River, Mile Markers 660.5-659.5, Lansing, IA.

(b) *Enforcement period.* This section will be subject to enforcement from

August 18, 2023, through August 31, 2023.

(c) Regulations.

(1) In accordance with the general safety zone regulations in § 165.23, entry of persons or vessels into this safety zone described in paragraph (a) of this section is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Upper Mississippi River.

(2) To seek permission to enter, contact the COTP or a designated representative via VHF-FM channel 16, or through USCG Sector Upper Mississippi River at 314-269-2332. Persons and vessels permitted to enter the safety zone must comply with all lawful orders or directions issued by the COTP or designated representative.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement, as well as reductions in size or scope of the safety zone through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Safety Marine Information Broadcast (SMIB) as appropriate.

Dated: August 9, 2023.

A.R. Bender,

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

[FR Doc. 2023-17477 Filed 8-14-23; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0754; FRL-9514-02-R9]

Air Plan Approvals; California; South Coast Air Quality Management District, Imperial and Ventura County Air Pollution Control Districts; Nonattainment New Source Review; 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve three state implementation plan (SIP) revisions submitted by the State of California addressing the nonattainment new source review (NSR) requirements for the 2015 8-hour ozone

National Ambient Air Quality Standards (NAAQS). These SIP revisions address the South Coast Air Quality Management District (SCAQMD or “District”), Imperial County Air Pollution Control District (ICAPCD or “District”), and Ventura County Air Pollution Control District (VCAPCD or “District”) portions of the California SIP. This action is being taken pursuant to the Clean Air Act (CAA or “Act”) and its implementing regulations.

DATES: This rule is effective September 14, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0754. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly

available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Amita Muralidharan, EPA Region IX, 75

Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4140 or by email at muralidharan.amita@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to the EPA.

Table of Contents

- I. Proposed Action
- II. Public Comments
- III. EPA Action
- IV. Statutory and Executive Order Reviews

I. Proposed Action

On April 14, 2022 (87 FR 22163), the EPA proposed to approve the SIP revisions listed in Table 1, addressing the NNSR requirements for the 2015 ozone NAAQS for the SCAQMD, ICAPCD, and VCAPCD.

TABLE 1—SUBMITTED CERTIFICATION LETTERS

District	Adoption date	Submittal date
South Coast Air Quality Management District (SCAQMD)	6/4/2021	8/3/2021
Imperial County Air Pollution Control District (ICAPCD)	6/22/2021	8/3/2021
Ventura County Air Pollution Control District (VCAPCD)	6/8/2021	8/3/2021

We proposed approval of the submitted SIP revisions because we determined that the 2015 ozone certifications submitted by the Districts fulfill the 40 CFR 51.1314 revision requirement and meet the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165. Our proposed action contains more information on the SIP revisions and our evaluation.

II. Public Comments

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one non-germane comment. A copy of the comment is in the docket for this action.

III. EPA Action

No comments were submitted during the 30-day public comment period that change our assessment from what we described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving these three certifications into the California SIP as proposed.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to

approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws,

regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 8, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

- 2. Section 52.220 is amended by adding paragraphs (c)(591)(ii)(B)(2), (c)(591)(ii)(C) and (D) to read as follows:

§ 52.220 Identification of plan-in part.

* * * * *

(c) * * *
(591) * * *
(ii) * * *
(B) * * *

(2) “Final Certification of Nonattainment New Source Review and Clean Fuels for Boilers Compliance Demonstration for 2015 8-hour Ozone Standard,” excluding the “Clean Fuels for Boilers Compliance Demonstration,” adopted June 4, 2021.

(C) Ventura County Air Pollution Control District.

(1) “Certification of the Nonattainment New Source Review Program Compliance Demonstration for the 2015 Federal Ozone Standard,” adopted June 8, 2021.

(2) [Reserved]

(D) Imperial County Air Pollution Control District.

(1) “The Certification of the Nonattainment New Source Review Permit Program for Imperial County Applicable to the 2015 Ozone National Ambient Air Quality Standard,” adopted June 22, 2021.

(2) [Reserved]

* * * * *

[FR Doc. 2023–17363 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0525; FRL–10583–02–R6]

Air Plan Approval; Texas; Oil and Natural Gas Reasonably Available Control Technology in the Dallas-Fort Worth and Houston-Galveston-Brazoria Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA)

is approving the July 20, 2021, revisions to the Texas State Implementation Plan (SIP) concerning Reasonably Available Control Technology (RACT) requirements for sources covered by the 2016 Oil and Natural Gas Control Techniques Guidelines (CTG or CTGs) for the Dallas-Fort Worth (DFW) and the Houston-Galveston-Brazoria (HGB) nonattainment areas (NAAs) for the 2008 8-hour ozone National Air Quality Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on September 14, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R06–OAR–2021–0525. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Anupa Ahuja, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–2701, ahuja.anupa@epa.gov. Please 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.

I. Background

The background for this action is discussed in detail in our February 17, 2023 proposal (88 FR 10253). In that document, we proposed to approve Texas’ July 20, 2021 SIP submittal, which includes revisions to the Texas SIP concerning the DFW and HGB 2008 8-hour ozone NAAQS NAAs, as meeting the RACT requirements for sources covered by the Oil and Gas CTG.¹ The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties. The HGB area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties. These areas were both reclassified as Serious nonattainment for the 2008 ozone NAAQS on August 23, 2019. The revisions are to Title 30 of the Texas Administrative Code (TAC) Chapter 115. The revisions create new RACT rules for oil and gas production and

¹ https://www3.epa.gov/airquality/ctg_act/2016-ctg-oil-and-gas.pdf.

natural gas processing in the DFW and HGB NAAs in Subchapter B in a new Division 7. EPA is also approving additional revisions to 30 TAC Chapter 115 which are non-substantive changes to Subchapters B, Divisions 1 and 2 and Subchapter D, Division 3 to reflect the change in the Chapter 115 rule applicability for the types of equipment currently required to comply with existing rule requirements but that would be subject to the Subchapter B, new Division 7 rule requirements upon the compliance date. The proposed approval was based on our review of 30 TAC Chapter 115 Subchapter B, Division 7 rules for consistency with EPA's definition of RACT. The details of EPA's review can be found in the technical support document (TSD) associated with the proposal.² We also proposed approving the new codification of changes to consolidate the rule requirements into a new section based on our determination that these changes were non-substantive and do not alter any existing rule requirement.

We received comments on our proposal from several commenters. Our response to comments follows.

II. Response to Comments

Comment: One commenter stated that the oil and natural gas industries should be made to drastically reduce volatile organic compound (VOC) emissions for the safety of human health and the environment, especially in nonattainment areas. They encouraged the EPA to continue to push for the elimination of VOCs and suggested the implementation of taxes or penalties, and replacing natural gas and oil with eco-friendly technologies.

Response: We generally agree that the effects of excessive VOC emissions on human health and the environment are negative. The EPA uses both "traditional" regulatory approaches and economic incentive approaches in implementing its mandates under the CAA. The 2016 oil and natural gas CTG at issue in this action is one of the tools under the CAA to reduce VOC emissions from certain sources. The approval of the revisions to 30 Texas Administrative Code (TAC) Chapter 115 in this action will reduce VOC emissions from oil and gas sources in the DFW and the HGB 2008 ozone nonattainment areas. This will in turn help to reduce the adverse impacts of these pollutants on public health and welfare. With respect to implementing penalty fees, the state of Texas and EPA both have the authority to bring

enforcement actions against sources for violations of federally approved SIPs, including 30 TAC Chapter 115 rules. However, the other issues raised by the commenter (elimination of VOCs, taxing, and eco-friendly technologies to replace natural gas and oil) are outside the scope of this action. This action is limited to the approval of the revisions to the 30 TAC Chapter 115, Subchapter B, Divisions 1, 2, 3, and 7 to address a VOC RACT requirement related to emissions from oil and gas sources in the DFW and HGB nonattainment areas.

Comment: Two commenters stated that further regulatory standards should be implemented to control sources of VOCs and nitrogen oxides (NO_x), precursors of ground level ozone. They further stated that revised and updated SIPs should be approved to reduce emissions and to further the ability to enforce compliance with emissions limits. One commenter agrees that this action will not only improve the monitoring of these harmful pollutants but will also strengthen the regulatory enforcement and compliance of emissions limits as well as ensure efficiency of industry equipment.

Response: These comments appear to support approval of the revisions to 30 TAC Chapter 115 that will reduce emissions of VOCs from oil and natural gas sources in the DFW and HGB nonattainment areas. As stated in our proposal, ground-level ozone, or smog, is formed when VOCs and NO_x emissions interact in the presence of sunlight. Automobiles, power plants, and refineries are some of the major sources of these ozone precursors.

Ozone is one of the six criteria pollutants identified in the CAA. Accordingly, the CAA requires the EPA to periodically review and update the NAAQS to ensure that it provides adequate health and environmental protection. When the EPA establishes or revises a NAAQS, it is required to designate areas of the country as meeting or not meeting the standard. For areas that do not meet the standard, the Act provides emissions control requirements based on the extent of the ozone problem in the area. Section 182 of the CAA provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. RACT for CTG-covered sources is one of the tools required by the CAA to reduce the emission of ozone precursors thereby reducing the formation of ground-level ozone.

Under the CAA, states have the primary responsibility to ensure the air quality within their geographic area is in compliance with the NAAQS. Each

state must therefore develop and adopt their SIP as state law. The SIP is then submitted to the EPA for review. If the EPA approves the SIP, those control measures become federally enforceable. Therefore, the state of Texas and the EPA both have authority to bring enforcement actions for violations of the federally approved 30 TAC Chapter 115 rules.

Comment: One commenter stated that SIPs should gain the power to penalize states that do not follow this act and that EPA should make more regulations to keep the planet clean and healthy.

Response: We understand the commenter's concern to be that SIPs should be enforceable, and that EPA should penalize states for not following the Clean Air Act. First, the state of Texas and the EPA both have authority to bring enforcement actions against sources for violations of federally approved SIPs. Members of the public can also file citizen suits under the CAA to address violations of SIPs. Second, the CAA includes certain negative consequences should a state fail to submit all or a portion of a SIP as required by the CAA, or where the EPA disapproves a SIP as not meeting the CAA requirements. In those situations, the EPA is required to develop a federal implementation plan (FIP) for the state unless the state addresses the deficiency appropriately. See CAA Section 110(c). Sanctions may also be imposed on the state in those situations. See CAA Section 179. For more details on Air Quality Implementation Plans please visit <https://www.epa.gov/air-quality-implementation-plans>.

III. Final Action

We are approving the revisions to the 30 TAC Chapter 115, Subchapter B, Divisions 1, 2, 3, and 7 as meeting RACT to address VOC emissions from oil and gas sources in the DFW and HGB nonattainment areas submitted to the EPA on July 20, 2021, for inclusion into the Texas SIP. This action is being taken under Section 110 of the Act.

In this action, the EPA is approving the following revisions to the Texas SIP adopted on June 20, 2021, and submitted to the EPA on December 17, 2021:

- Revisions to 30 TAC Chapter 115, Sections 115.111, 115.112, 115.119, and 115.121,
- Adoption of Division 7: Oil and Natural Gas in Ozone Nonattainment
- Areas and 30 TAC Sections 115.170 through 115.181 and 115.183, and Revisions to 30 TAC Section 115.357.

² <https://www.regulations.gov/document/EPA-R06-OAR-2021-0525-0002>.

IV. Environmental Justice Considerations

EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the DFW and HGB 2008 ozone NAAs. EPA then compared the data to the national average, for each of the demographic groups. The results of this analysis are included in the docket for this action and are provided for informational and transparency purposes. The results of the demographic analysis indicate that communities in close proximity to industrial sources may be subject to disproportionate environmental impacts of air pollution.

This final action approves revisions to the Texas SIP to reduce VOC emissions from oil and natural gas sources in the DFW and HGB 2008 ozone NAAs. We expect that this action and resulting emissions reductions will generally be neutral or contribute to reduced environmental and health impacts on all populations in the DFW and HGB 2008 ozone NAAs, including people of color and low-income populations. At a minimum, this action would not worsen any existing air quality and is expected to ensure the area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating that this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people.

V. Incorporation by Reference

In this action, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Texas' revisions to 30 TAC Chapter 115, Subchapter B, Divisions 1, 2, 3, and 7 as meeting RACT to address VOC emissions from oil and gas sources in the DFW and HGB nonattainment areas as described in the Final Action section above. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be

incorporated by reference in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair

treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The air agency did not evaluate environmental justice considerations as part of its SIP submittal even though the CAA and applicable implementing regulations neither prohibit nor require an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, "Environmental Justice Considerations." The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based that is inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness

of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2023.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. In § 52.2270 (c), the table titled “EPA Approved Regulations in the Texas SIP”, under the heading “Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds”, is amended by:

(a) Under the subheading “Subchapter B: General Volatile Organic Compound Sources”,

(i) Revising the entries for sections 115.111, 115.112, 115.119, and 115.121; and

(ii) Adding “Division 7: Oil and Natural Gas in Ozone Nonattainment Areas” consisting of sections 115.170 through 115.181 and 115.183, immediately following the entry for section 115.169; and

(b) Under the subheadings “Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes” and “Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas”, revising the entry for section 115.357.

The revisions and addition read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution From Volatile Organic Compounds				
*	*	*	*	*
Subchapter B: General Volatile Organic Compound Sources				
*	*	*	*	*
Section 115.111	Exemptions	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.112	Control Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
*	*	*	*	*
Section 115.119	Compliance Schedules	7/20/2021		
*	*	*	*	*
Section 115.121	Emissions Specifications	7/20/2021	8/15/2023, [Insert Federal Register citation].	
*	*	*	*	*
Division 7: Oil and Natural Gas in Ozone Nonattainment Areas				
Section 115.170	Applicability	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.171	Definitions	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.172	Exemptions	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.173	Compressor Control Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.174	Pneumatic Controller and Pump Control Requirements.	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.175	Storage Tank Control Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.176	Alternative Control Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.177	Fugitive Emission Component Monitoring Requirements.	7/20/2021	8/15/2023, [Insert Federal Register citation].	

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/ submittal date	EPA approval date	Explanation
Section 115.178	Monitoring and Inspection Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.179	Approved Test Methods and Testing Requirements.	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.180	Recordkeeping Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.181	Reporting Requirements	7/20/2021	8/15/2023, [Insert Federal Register citation].	
Section 115.183	Compliance Schedules	7/20/2021	8/15/2023, [Insert Federal Register citation].	
*	*	*	*	*
Subchapter D—Petroleum Refining, Natural Gas Processing, and Petrochemical Processes				
*	*	*	*	*
Division 3: Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas				
Section 115.357	Exemptions	7/20/2021	8/15/2023, [Insert Federal Register citation].	
*	*	*	*	*

[FR Doc. 2023–16640 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[EPA–R05–OAR–2020–0555; FRL–11148–02–R5]****Air Plan Approval; Illinois; Base Year Emissions Inventory for the 2015 Ozone Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to the State Implementation Plan (SIP) submitted by the Illinois Environmental Protection Agency (Illinois EPA) on October 22, 2020, and February 14, 2023. The revisions address the emissions inventory requirements for the Chicago and Metro-East nonattainment areas under the 2015 ozone National Ambient Air Quality Standard (NAAQS or standard). The Chicago nonattainment area includes Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will counties. The Metro-East nonattainment area includes Madison, Monroe, and St. Clair counties. The

CAA requires emissions inventories for all ozone nonattainment areas.

DATES: This direct final rule will be effective October 16, 2023, unless EPA receives adverse comments by September 14, 2023. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0555 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Emily Crispell, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8512, crispell.emily@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. The 2015 Ozone NAAQS Emissions Inventory Rule Requirements

On December 28, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65292. Portions of the Chicago area and the Metro-East area were designated as marginal nonattainment areas for the 2015 ozone NAAQS. See 83 FR 25776 (August 3, 2018). The Chicago and Metro-East areas have since been reclassified as moderate

nonattainment areas. See 87 FR 60897 (November 7, 2022).

CAA sections 172(c)(3) and 182(a)(1), 42 U.S.C. 7502(c)(3) and 7511a(a)(1), require states to develop and submit, as SIP revisions, emission inventories for all areas designated as nonattainment for any NAAQS, including the ozone NAAQS. An emission inventory for ozone is an estimation of actual emissions of air pollutants that contribute to the formation of ozone in an area. Ozone is a gas that is formed by the reaction of Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) in the atmosphere in the presence of sunlight (VOC and NO_x are referred to as ozone precursors). Therefore, an emission inventory for ozone focuses on the emissions of VOC and NO_x. VOC is emitted by many types of pollution sources, including power plants, industrial sources, on-road and non-road mobile sources, smaller stationary sources, collectively referred to as area sources, and biogenic sources. NO_x is primarily emitted by combustion sources, both stationary and mobile.

Emission inventories provide emissions data for a variety of air quality planning tasks, including establishing baseline emission level (anthropogenic [manmade] emissions associated with ozone standard violations), calculating emission reduction targets needed to attain the NAAQS and to achieve reasonable further progress (RFP) toward attainment of the ozone standard, determining emission inputs for ozone air quality modeling analyses, and

tracking emissions over time to determine progress toward achieving air quality and emission reduction goals. As stated above, the CAA requires the states to submit emissions inventories for areas designated as nonattainment for ozone. The “Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements” specifies that states submit ozone season day emissions estimates for an inventory calendar year to be consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b). See 83 FR 62998 (February 4, 2019). For the RFP baseline year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial (3-year cycle) emissions inventory (40 CFR 51, subpart A) preceding the year of the area’s effective date of designation as a nonattainment area. (83 FR 63034–63035, December 6, 2018).¹ States are required to submit estimates of VOC and NO_x emissions for four general classes of anthropogenic sources: stationary point sources; area sources; on-road mobile sources; and non-road mobile sources.

II. Illinois EPA’s Emissions Inventory

On October 22, 2020, Illinois EPA submitted a SIP revision addressing the emissions inventory requirement of CAA section 182(a)(1). The October 22, 2020, submittal did not provide information for McHenry and Monroe Counties as those counties were not

originally included in the nonattainment areas. On June 14, 2021, McHenry County was added to the Chicago nonattainment area and Monroe County was added to the Metro-East nonattainment area (86 FR 31438). On February 14, 2023, Illinois EPA submitted an updated SIP revision including emissions inventory information for McHenry and Monroe Counties and an updated mobile source inventory using the most recent Motor Vehicle Emissions Simulator (MOVES3). Illinois EPA provided documentation of a 2017 NO_x and VOC base year emissions inventory requirement for the Chicago metropolitan and the Metro-East nonattainment areas. Illinois EPA selected 2017 because: (1) the 2017 baseline year was the most recent comprehensive, accurate, and quality assured triennial emissions inventory in the National Emissions Inventory (NEI) database available at the time the state began preparing the emissions inventory submittal for the Chicago and the Metro-East nonattainment areas; and (2) it is consistent with baseline year for the RFP plan as required by 40 CFR 51.1310(b). The baseline year for RFP would be the calendar year for the most recently available triennial emissions inventory at the time rate of progress/RFP plans are developed (*e.g.*, 2017 for initial designations effective in 2018) (83 FR 62998). Tables 1 and 2 summarize the 2017 NO_x and VOC emissions for the Chicago area and the Metro-East area in tons of emissions per ozone season day.²

TABLE 1—2017 OZONE SEASON DAY NO_x EMISSIONS

County/nonattainment area	Point	Area	Non-road	On-road	Total NO _x
Chicago Nonattainment Area	76.82	33.59	131.52	160.36	402.29
Metro-East Nonattainment Area	12.12	1.93	20.68	17.04	51.77

TABLE 2—2017 OZONE SEASON DAY VOC EMISSIONS

County/nonattainment area	Point	Area	Non-road	On-road	Total VOC
Chicago Nonattainment Area	45.31	226.68	70.09	63.28	405.36
Metro-East Nonattainment Area	9.79	19.41	5.01	6.13	40.34

A. Base Year Inventory

Illinois EPA estimated NO_x and VOC emissions for all source categories in the Chicago and Metro-East ozone nonattainment areas. Emissions for these counties were totaled by source

category for each ozone nonattainment area.

1. Point Sources

To develop the NO_x and VOC point source emissions inventories, Illinois EPA used the annual source reported emissions data including emissions,

process rates, operating schedules, emission control data, and other relevant information obtained from the permit files and plant inspections. Ozone season day emissions for point sources were calculated for each process using the original source specific data.

¹ The RFP requirements specified in CAA section 182(b)(1) shall apply to all area’s designated

nonattainment for ozone classified Moderate or higher.

² The ozone season is the portion of the year in which high ozone concentrations may be expected in a given area.

2. Area Sources

To develop the NO_x and VOC area source emissions inventories, Illinois EPA used 2017 category activity levels, where available, or projections of changes in activity from 2014 to 2017 levels with a preference to Illinois-specific data.

3. On-Road and Non-Road Sources

To develop the NO_x and VOC on-road and non-road source emissions inventories, Illinois EPA used EPA's MOVES3 model. Inputs to run the model were provided by the Division of Mobile Source Programs within the Illinois EPA's Bureau of Air. Aircraft emissions were calculated using actual activity data (operations) for each airport. Emissions from locomotives were calculated from data provided by EPA. Commercial marine vessel emissions were grown from 2014 emissions estimates using a growth factor for 2014 to 2017 calculated by using the ratio of the total tonnage shipped for those years for the Illinois, Mississippi, and Ohio Rivers based on data from the Waterborne Commerce Statistics Center's (U.S. Army Corps of Engineers) Waterborne Commerce Statistics Report for Calendar Year 2017.

B. How did the state develop the emission inventories?

For point sources (electrical generating units (EGUs) and non-EGUs), Illinois EPA calculates and stores emissions data annually in the state's air emissions inventory database. Under the authority of 35 Ill. Adm. Code 254 and 203, Illinois EPA requires any facility in the state that emits a pollutant above the specified thresholds to submit emission inventory statements annually. These reports are required to contain detailed source type-specific or annual source unit-specific and seasonal actual emissions for all source units in a facility. Illinois EPA has provided a detailed list of point sources included in the 2017 base year inventory by nonattainment area and source category with their respective NO_x and VOC emissions within appendices A and B of their February 14, 2023, submittal.

For area source (sometimes referred to as non-point source) emissions, Illinois EPA relied on a variety of state-specific data to estimate emissions based on EPA's procedures and guidance for the 2017 base emissions inventory. Area sources are spread over wide areas with no distinct discharge points or are comprised of a large number of small point sources that are difficult to describe separately and whose emissions are not well characterized

(e.g., heating furnaces in individual homes, architectural surface coating, automobile refueling, dry cleaning, etc.).

To develop an accurate and complete area source inventory, Illinois EPA used data from EPA's AP-42: Compilation of Air Emissions Factors, EPA's WebFIRE emission factor database, and data from Federal and state agencies including EPA's Office of Air Quality Planning and Standards, the U.S. Department of Energy, U.S. Bureau of Labor Statistics, Illinois Department of Transportation, Illinois Department of Agriculture, along with 2017 category activity levels, where available, or projections of changes in activity from 2014 to 2017 levels with a preference to Illinois-specific data. In most cases, Illinois EPA calculated 2017 area source emissions estimates by using emissions factors detailed in appendix D of Illinois EPA's submittal. In other cases, Illinois EPA estimated area source emissions by using growth factors to convert 2014 emissions to 2017 emission levels. The area source emissions for the partial county 2015 ozone NAAQS nonattainment areas, were apportioned by taking the whole county emission estimates and allocating to the partial county areas on a township level using surrogates related to the activity being estimated.

Illinois EPA has provided a detailed list of the area sources included in the 2017 base year inventory by Source Classification Code (SCC) and county, with their respective NO_x and VOC emissions in appendices A and B, including a detailed discussion how the emissions were derived for each source category within their February 14, 2023, submittal.

The non-road mobile source emissions were developed by Illinois EPA using MOVES3. Commercial marine vessel emissions were grown from 2014 values. Aircraft emissions were calculated using the number of landings and take-offs in conjunction with an emission factor using the Emissions and Dispersion Modeling System. In appendices A and B of its submittal, Illinois EPA provided a list of the non-road sources included in the 2017 base year inventory by SCC and county, with their respective NO_x and VOC emissions.

On-road mobile source emissions were developed by Illinois EPA using MOVES3. The state-specific data inputs were retrieved from Division of Mobile Source Programs within the Illinois EPA's Bureau of Air.

Most of the quality assurance (QA) for on-road mobile emissions was processed through tools built into MOVES3. Additionally, just like the

point and nonpoint inventories, QA was performed when the data was submitted to the Emissions Inventory System Gateway. In appendices A and B of the February 14, 2023, submittal, Illinois EPA documented on-road emissions by SCC and county.

III. EPA's Evaluation

EPA has reviewed Illinois EPA's October 22, 2020, and February 14, 2023, SIP submittals for consistency with sections 172(c)(3) and 182(a)(1) of the CAA, and EPA's emission inventory requirements. In particular, EPA has reviewed the techniques used by Illinois EPA to derive and quality assure the emissions estimates. Illinois EPA documented the procedures used to estimate the emissions for each of the major source types. The documentation of the emission estimation procedures is sufficient for EPA to determine that Illinois followed acceptable procedures to estimate the emissions.

Illinois EPA developed a QA plan and followed this plan during various phases of the emissions estimation and documentation process to QA the emissions for completeness and accuracy. These quality assurance procedures were summarized in the documentation describing how the emissions totals were developed. The quality assurance procedures have been determined to be adequate and acceptable. We conclude that Illinois EPA has developed inventories of NO_x and VOC emissions that are comprehensive and complete.

IV. Illinois's Public Notice and Comment

40 CFR part 51, appendix V, requires that the state provide sufficient notice and opportunity for public comment and hearing on all SIP submittals. On October 11, 2022, Illinois EPA notified the public of the 30-day period for the opportunity to comment on the requested SIP revisions pertaining to the emission inventories for the 2015 ozone NAAQS nonattainment areas. The notification was published on Illinois EPA's website at: <https://www2.illinois.gov/epa/public-notice/Pages/default.aspx>. Illinois EPA did not receive any public comments or requests for a public hearing by the stated date in the public notice. Illinois EPA canceled the public hearing.

V. What action is EPA taking?

EPA is approving Illinois EPA's SIP revision submitted to address the ozone-related emission inventory requirements for the Chicago metropolitan area and the Metro-East area nonattainment areas for the 2015 ozone NAAQS. The

emission inventories we are approving into the SIP are specified in Tables 1 and 2, above. We are approving the emission inventories because they contain comprehensive, accurate, and current inventories of actual emissions for all relevant sources in accordance with CAA sections 172(c)(3) and 182(a), and because Illinois adopted the emission inventories after providing for reasonable public notice and a public hearing.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective October 16, 2023 without further notice unless we receive relevant adverse written comments by September 14, 2023. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 16, 2023.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Illinois EPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an environmental justice analysis and did not consider environmental justice in this action. Due to the nature of the action being taken, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of environmental justice is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 16, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 52.720, amend the table in paragraph (e) under the heading “Emissions Inventories” by adding an entry for “Emissions inventory—2017 (2015 8-hour ozone)” after the entry for

“Emission inventory—2012 (2008 Lead)” to read as follows:

§ 52.720 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED ILLINOIS NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Emissions inventory—2017 (2015 8-hour ozone).	Chicago and St. Louis areas	10/22/2020	8/15/2023, [INSERT Federal Register CITATION].	
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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[FR Doc. 2023–17343 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 271**

[EPA–R01–RCRA–2023–0264; FRL 11231–02–R1]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: New Hampshire has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA has reviewed New Hampshire’s application and has determined that these revisions satisfy all requirements needed to qualify for final authorization. Therefore, we are taking direct final action to authorize the State’s changes. In the “Proposed Rules” section of this issue of the **Federal Register**, the EPA is also publishing a separate document that serves as the proposal to authorize these revisions. Unless the EPA receives written comments that oppose this authorization during the comment period, the decision to authorize New Hampshire’s revisions to its hazardous waste program will take effect.

DATES: This final authorization will become effective on October 16, 2023, unless the EPA receives adverse written comments by September 14, 2023. If the EPA receives any such comment, the EPA will publish a timely withdrawal of this direct final rule in the **Federal**

Register and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2023–0264, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Tulasi Landes, RCRA Waste Management, and Lead Branch; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; telephone number: (617) 918–1228; email address: landes.tulasi@epa.gov.

SUPPLEMENTARY INFORMATION:**A. Why are revisions to State programs necessary?**

States that have received final authorization from the EPA under RCRA

Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask the EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to the EPA’s regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273, and 279.

New federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) take effect in authorized states at the same time that they take effect in unauthorized states. Thus, the EPA will implement those requirements and prohibitions in New Hampshire, including the issuance of new permits implementing those requirements, until New Hampshire is granted authorization to do so.

B. What decisions has the EPA made in this rule?

On June 9, 2023, New Hampshire submitted a complete program revision application seeking authorization of revisions to its hazardous waste program. The EPA concludes that New Hampshire’s application to revise its authorized program meets all the statutory and regulatory requirements established by RCRA, as set forth in RCRA Section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, the EPA grants final authorization to New Hampshire to operate its hazardous waste program with the revisions described in its authorization

application, and as listed below in Section G of this document.

The New Hampshire Department of Environmental Services (NHDES) has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of HSWA, as discussed above.

C. What is the effect of this authorization decision?

This decision serves to authorize New Hampshire for the revisions to its authorized hazardous waste program described in its authorization application. These changes will become part of the authorized State hazardous waste program and will therefore be federally enforceable. New Hampshire will continue to have primary enforcement authority and responsibility for its State hazardous waste program. The EPA would maintain its authorities under RCRA Sections 3007, 3008, 3013, and 7003, including its authority to:

- Conduct inspections, and require monitoring, tests, analyses and reports;
- Enforce RCRA requirements, including authorized State program requirements, and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action will not impose additional requirements on the regulated community because the regulations for which the EPA is authorizing New Hampshire are already effective under state law and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, the EPA is publishing a separate document in the "Proposed Rules" section of this issue of the **Federal Register** that serves as the proposal to authorize New Hampshire's program revisions. The EPA did not publish a proposal before this rule because the EPA views this as a routine program change and does not expect comments that oppose this approval. The EPA is providing an opportunity for public comment now, as described in Section E of this document.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further

decision on the authorization of New Hampshire's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. The EPA will then address all such comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If the EPA receives comments that oppose only the authorization of a particular revision to New Hampshire's hazardous waste program, the EPA will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has New Hampshire previously been authorized for?

The State of New Hampshire initially received final authorization on December 18, 1984, effective January 3, 1985 (49 FR 49093) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to New Hampshire's program on the following dates: November 14, 1994, effective January 13, 1995 (59 FR 56397); and February 27, 2006, effective April 28, 2006 (71 FR 9727); and March 1, 2019, effective May 17, 2019 (84 FR 22378).

G. What revisions is the EPA proposing with this proposed action?

On June 9, 2023, New Hampshire submitted a final complete program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. New Hampshire seeks authority to administer the federal requirements that are listed in Table 1 below. This table lists New Hampshire's analogous requirements that are being recognized as no less stringent than the analogous federal requirements.

New Hampshire is seeking authorization for updated state regulations addressing most federal requirements and for changes to New Hampshire's base program for which they had been previously authorized. Significant program revisions in this package include the Management Standards for Hazardous Waste Pharmaceuticals, and the e-Manifest rule.

The EPA proposes to determine, subject to public review and comment, that New Hampshire's hazardous waste program revisions are equivalent to,

consistent with, and no less stringent than the Federal program, and therefore satisfy all of the requirements necessary to qualify for final authorization. We are proposing to authorize the program changes as provided in each of the following Revision Checklists (RC):

- CL086: Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment
- CL125: Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations
- CL144: Removal of Legally Obsolete Rules
- CL193: Change of Official EPA Mailing Address
- CL209: Universal Waste Rule: Specific Provisions for Mercury Containing Equipment
- CL213: Burden Reduction Initiative
- CL214: Corrections to Errors in the Code of Federal Regulations
- CL223: Hazardous Waste Technical Corrections and Clarification
- CL228: Hazardous Waste Technical Corrections and Clarifications Rule
- CL236: Imports and Exports of Hazardous Waste
- CL238: Confidentiality Determinations for Hazardous Waste Export and Import Documents
- CL240: Safe Management of Recalled Airbags
- CL241: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine
- CL242: Universal Waste Regulations: Addition of Aerosol Cans
- SCC E-Manifest: Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules

H. Where are the revised State rules different from the Federal rules?

When revised state rules differ from the Federal rules in the RCRA state authorization process, EPA determines whether the state rules are equivalent to, more stringent than, or broader in scope than the federal program. Pursuant to Section 3009 of RCRA, 42 U.S.C. 6929, state programs may contain requirements that are more stringent than the federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent states from adopting regulations that are broader in scope than the federal program, states cannot receive federal authorization for such regulations, and they are not federally enforceable. The most significant differences between the New Hampshire rules and the federal rules are highlighted and summarized in the Table 1 below. It should be noted that

this summary does not describe every difference, nor every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand their compliance responsibilities.

1. More Stringent Provisions

There are aspects of the New Hampshire program which are more stringent than the federal program. These requirements would become part of New Hampshire's authorized program and would be federally enforceable. All of these more stringent requirements are, or will become, part of the federally enforceable RCRA program when authorized by the EPA and must be complied with in addition to the State requirements which track the minimum federal requirements. These more stringent requirements are identified as MS in the Table 2 below.

2. Broader-in-Scope Provisions

There are aspects of the New Hampshire program that are broader-in-scope than the federal program. These broader-in-scope requirements do not become part of the authorized program and EPA cannot enforce them. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as BIS in the Table 2 below.

3. Partially Broader-in-Scope

There are aspects of the New Hampshire program that are partially broader-in-scope than the federal program. These partially broader-in-scope requirements are the result of New Hampshire not adopting certain portions of the regulations. These partially broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. However, the parts of the regulations which are not partially broader-in-scope are part of the federally enforceable RCRA

program. Regulated entities must comply with these requirements in accordance with State law. These broader-in-scope requirements are identified as Partially BIS in the Table 2 below.

4. Different But Equivalent Provisions

New Hampshire also has some regulations that differ from, but have been determined to be equivalent to, the federal regulations. These state regulations will become part of the federally enforceable RCRA program when authorized by the EPA. These different but equivalent requirements are identified as EQ in the Table 2 below.

5. There are certain federal requirements that EPA cannot delegate to the States, although New Hampshire has adopted these requirements by reference, EPA would continue to implement those requirements. These requirements are identified in the Table 2 below.

TABLE 1—NEW HAMPSHIRE'S EQUIVALENT ANALOGS TO THE FEDERAL REQUIREMENTS

Federal requirements	Description of checklist No. and Federal requirement	Analogous State authority
CL 86: Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment.	56 FR 7567–7568; February 25, 1991	402.04(d); 405.02(b).
CL 125: Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations.	58 FR 38816–38884; July 20, 1993	401.06(j).
CL 144: Removal of Legally Obsolete Rules	60 FR 33912–33915; June 29, 1995	102.01; 304.02(a)(6); 304.10; 304.10(a); 304.02(f); 304.02(f)(1).
CL193: Change of Official EPA Mailing Address.	66 FR 34374–34376; June 28, 2001	104.58; 401.06(k); Appendix B.
CL 209: Universal Waste Rule: Specific Provisions for Mercury Containing Equipment.	70 FR 45508–45522; August 5, 2005	104.12; 104.76; 104.76(c); 701.02(a)(13); 1202.02(d); 303.02(i); 1101.02; 1111.01; 401.01; 1111.02(a)–(c); 1101.03(a); 1101.03(c) and (f); 1101.03(e); 1102.03(b); 1111.03; 1102.03(c); 1111.03(a)–(b); 1102.03(c); 1111.03(d)–(e); 1111.03(d)(1)–(2); 1111.03(f); 1111.03(f)(1)–(2); 1111.03(g); 1111.04; 1104.03(b)(1).
CL 213: Burden Reduction Initiative	71 FR 16862–16915; April 4, 2006	202.04(a)(4); 401.03(a)(12); 401.03(b)(14); 708.02(a)(4)–(5); 708.02(a)(10); 705.01(b)–(c); 705.01(c)(1)–(6); 705.01(b)(6); 705.01(b)(10); 708.02(a)(11)–(13); 708.03(d)(1)–(2); 708.03(d)(4)–(8); 708.03(d)(10); 707.03(a)(4)–(5); 707.03(a)(9)–(12); 707.04(b)–(g); 707.04(k)–(l); 1202.01; 304.11; 202; 304.11(a)(9); 304.25.
CL214: Corrections to Errors in the Code of Federal Regulation.	71 FR 40254–40280; July 14, 2006	103.77; 104.28; 104.76; 104.80; 808.06(a)–(b); 803.03(a)(1); 401.01(d)–(e); 401.03(b)(6); 401.03(b)(6)a; 401.03(b)(9); 401.03(b)(14); 804.02(b)–(c); 804.02(e)–(f); 804.01(b)(4); 403.03(b)(3)–(4); 403.06(c)–(d); 402.06(a)–(b); 402.07(a); 402.04(b); 402.05(b); 402.01(b); 405.02(b); 803.03(b)(5)a; 501.02(a); 512.03; 510.06(a); 701.02(a)(6); RSA 147–A:13; 708.02(a)(2); 708.02(a)(6); 302.04; 103.01; 702.10; 708.02(a)(11)–(13); 708.03(d)(1)–(10); 705.01(c)(1)e; 705.01(c)(1)f; 701.02(a)(6); 707.03(a)(1); 707.03(a)(3); 707.03(a)(5); 707.03(a)(7); 707.03(a)(9); 702.10; 707.03(a)(10)–(12); 707.04(b)–(g); 707.04(j)–(l); 707.03(a)(6); 707.04; 801.02(d); 809.01–809.04; 102.01; 1202.01; 509.05; 707.05; 708.04; 301; 303; 304; 304.03; 303.02(k); 104.22; 104.37; 304.11(a)(9); 304.10(d); 304.11(a)(1); 304.11; 304.24(d); 304.26(f); 304.25; 304.02(a)(7) & (f)(3); 104.76; 1102.03(b); 1110.04; 1110.06; 1109.04; 102.02(a) and (b)(1); 1202.02(a)(1)–(3) and (b)(8); 304.02(a).

TABLE 1—NEW HAMPSHIRE'S EQUIVALENT ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Federal requirements	Description of checklist No. and Federal requirement	Analogous State authority
CL223: Hazardous Waste Technical Corrections and Clarifications.	75 FR 12989–13009; 75 FR 31716–31717; March 18, 2010, June 4, 2010.	104.34; 803.01; 804.02(a); 804.02(c); 401.03(b); 802.02; 804.01(b)(3); 401.03(b)(21); 401.03(d)–(e); 404.04; 401.03(d)(1); 401.03(d)(3); 403.05(b)(8); 402.02; 503.03(d); 402.06(a); 402.07(a); 402.05(b); 402.01(b); 501.02(a); 101.02; 511.02(b); 511.02(b)(1)–(2); 511.02(b)(2)b; 511.02(b)(2)a; 511.02(b)(3); 511.02(d); 512.01(a)(1); 512.04; 511.01(c)–(d); 511.02(e); 511.02(e)(1)–(2); 511.01(e); 104.67; 304.11; 601.01(b)(2)–(3); 701.01(a); 708.02(a)(10); 704.01; 708.03(d)(6); 707.03(a)(9); 707.04(g); 805.01(c)–(d); 808.05; 809.04(b); 1202.01; 304.06(a); 304.06(a)(1); 304.06(a)(3)–(5).
CL228: Hazardous Waste Technical Corrections and Clarifications.	77 FR 22229–22232; April 13, 2012	402.07(a); 805.01(d).
CL236: Imports and Exports of Hazardous Waste.	81 FR 85696–85729, 82 FR 41015–41016; November 28, 2016, August 29, 2017.	102.01; 501.03(c); 510.06(b); 401.03(b)(13)–(14); 401.03(b)(36); 510.06; 601.01(b)(5); 703.01; 705.01(b)(1); 804; 808.02(e); 808.03(e); 809.03(c); 809.05; 1101.02(c); 1102.08(a); 1106.07(a)–(b); 1102.08(b); 501.01(c); 504.01(g); 504.02(g); 512.03(a)(1)–(3); 512.04(a) and (c)(4); 103.45; 103.56; 103.75; 512.03(b); 601.01(a); 604.01(d); 604.01(a); 703.01; 709.01(c); 804.02(e); 808.01; 808.02(a)–(b); 808.03(a)–(b); 808.04(a)(1)–(3); 804.02(f); 809.01; 809.05; 809.06; 1109.01(b); 1104.05(a)–(b); 1107.03(a)–(b); 1101.02(b)–(c); 1101.02(b)(1)–(3); 708.02(a)(1); 707.03(a)(1); and 1104.06(a)–(b).
CL238: Determinations for Hazardous Waste Export and Import Documents.	82 FR 60894–60901; December 26, 2017	203.02; 203.03(d); 1102.08(b); 1106.07(b); 401.03(b)(36); 510.06; 601.01(b)(5); 705.01(b)(1); 808.02(e); 808.03(e); 808.04(a)(3); 809.03(c); 809.05; 1101.02(c); 1102.08(a); 1106.07(a).
CL240: Safe Management of Recalled Airbags.	83 FR 61552–61563; November 30, 2018	401.02(a); 401.02(b); 401.02(c); 401.03(k); 401.03(k)(1)–(4); 401.03(k)(5); 401.03(l)(1); 401.03(l)(2)–(3).
CL241: Management Standards for Hazardous Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	84 FR 5816–5950; February 22, 2019	401.03(d)(4); 401.03(b)(21) & (d); 402.04(a)(2); 402.05(a)(2); 402.04(b); 501.02(i); 501.01(d); 501.02(j) & (k); 503.03(a)(11); 511.01(g)(1); 511.01(g)(2); 701.02(a)(15); 1302.01; 103.49; 103.67; 103.69; 1302.02(a)(1); 1302.02(a)(2); 104.08; 104.19; 104.30; 104.33; 104.43; 501.01(e); 1302.02(b)(1); 1302.02(b)(2); 1302.02(b)(3); 1302.02(b)(4); 1302.02(c)(1)–(9); 1302.02(d)(1)–(3); 1302.02(e)(1)–(5); 1302.02(f); 1302.02(g); 1302.02(h)(1)–(2); 1302.02(i)(1)–(3); 1302.02(j)(1)–(10); 1202.01; 303.02(n); 1108.01(a); 1108.01(c).
CL242: Universal Waste Regulations: Addition of Aerosol Cans.	84 FR 67202; December 9, 2019	103.07; 104.76(c); 104.76(d); 104.76(g); 104.77; 701.02(a)(13); 1202.02(d); 303.02(i); 1110.01(b); 1115; 1115.01; 401.01; 1115.02; 1115.02(a)–(b); 1101.03(c) and (f); 104.29; 1101.03(e); 1102.03(b); 1115.03(a)–(c); 1115.03(d)(1)–(10); 1115.03(e); 1115.04; 1104.03(b)(1).
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239).	79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018.	203; 203.02; 203.03(c); 101.05(a)–(b); 102.02(b)(2); 103.39; 103.40; 104.10; 102.01; 510.01(a); 510.04(d); 510.02(c)(1); 604.01(a); 606.01; 604.01(e); 703.01(a); 703.02(c).

TABLE 2—NEW HAMPSHIRE'S MORE STRINGENT/BROADER IN SCOPE ANALOGS TO THE FEDERAL REQUIREMENTS

Federal requirements	Description of checklist number and federal requirement	Analogous state authority
70 FR 45508–45522; August 5, 2005		
CL 209: Universal Waste Rule: Specific Provisions for Mercury Containing Equipment.	273.9	1101.03(c) and (f)—NH requires a UW handler who accumulates 20,000 kg or more to be defined as a “very large quantity handler” and must meet the additional requirements in 1105. (MS)
	273.13(c)(2)(iii) & (iv)	1111.03(b)(1)—NH requires containers to meet requirements of 507 instead of 40 CFR pts. 260–272. MS provisions include labeling, storage on an impervious surface, secondary containment for wastes with free liquids if floor drains are present, requirements for outside storage, and more (e.g., labeling, inspections, personnel training, accumulation time limits) depending on generator category. In a future rule-making, NH will clarify that containers must meet applicable requirements of Env-Hw 100–800 and 1200. (MS).
	273.13(c)(2)(vii)	1102.03(c). 1111.03(b)(2)—NH requires containers to meet requirements of 40 CFR pt. 273.13(c)(1) instead of (c)(2)(vii). (MS).
	273.32(b)(5)	1104.03(b)(2)—NH requires that a UW handler notify as a very large quantity handler if ≥20,000 kg is accumulated and meet the requirements in 1105, including storage outside the 100-year floodplain, storage area inspections, contingency plans and emergency procedures, preparedness and prevention, security, closure, and financial assurance. (MS).

TABLE 2—NEW HAMPSHIRE'S MORE STRINGENT/BROADER IN SCOPE ANALOGS TO THE FEDERAL REQUIREMENTS—
Continued

Federal requirements	Description of checklist number and federal requirement	Analogous state authority
	273.33(c)(2)(iii) & (iv)	1111.03(b)(1)—NH requires containers to meet requirements of 507 instead of 40 CFR pts. 260–272. MS provisions include labeling, storage on an impervious surface, secondary containment for wastes with free liquids if floor drains are present, requirements for outside storage, and more (e.g., labeling, inspections, personnel training, accumulation time limits) depending on generator category. In a future rule-making, NH will clarify that containers must meet applicable requirements of Env-Hw 100–800 and 1200. (MS).
	273.33(c)(2)(vii)	1102.03(c). 1111.03(b)(2)—NH requires containers to meet requirements of 40 CFR 273.13(c)(1) instead of (c)(2)(vii). (MS).
71 FR 16862–16915; April 4, 2006		
CL 213: Burden Reduction Initiative	261.4(f)(9)	401.03(b)(14)—NH's maximum quantity of non-acute HW is 250 kg. (MS).
	264.56(i)	706.02—NH requires cleanup of HW discharges within 24 hours or submittal of a cleanup plan if cleanup takes longer than 24 hours. NH also requires submittal of a cleanup report within 30 days of completion. (MS)
	265.56(i)	706.02—NH requires cleanup of HW discharges within 24 hours or submittal of a cleanup plan if cleanup takes longer than 24 hours. NH also requires submittal of a cleanup report within 30 days of completion. (MS).
	270.14(a)	304.11. 202 (waivers). 304.11(a)(4)—NH requires a NH registered PE to prepare and stamp plans. (MS).
71 FR 40254–40280; July 14, 2006		
CL 214: Corrections to Errors in the Code of Federal Regulations.	260.22(a)(1) and 260.22(d)(1)(ii). 261.3(a)(2)(i)	406—NH is not seeking authority for delisting of federally listed waste. (BIS). 401.01(b)(3)—NH regulates as characteristic wastes mixtures of HW with materials that are not solid wastes (e.g., soils) if the mixture exhibits a characteristic. (Partially BIS) 401.01(d)—EQ. 401.01(e)—EQ. 401.03(b)(14)—NH's max quantity of non-acute HW is 250 kg. (MS).
	261.4(e)(2)(vi) and 261.4(e)(3)(i). 261.31(a)/Table	402.06(a) and (b)—NH has clarified the F006 and F019 listings by specifying the processes that are included in the listing based on EPA guidance. (EQ). 402.06(c)—NH lists Used Oil as a generic process HW with the NH HW number "NH01." (Partially BIS).
	261.32/Table "K069" entry ..	402.07(a)—NH has not adopted the administrative stay for the K069 listing. (Partially BIS).
	265.56(b)	706.02—NH requires cleanup of HW discharges within 24 hours or submittal of a cleanup plan if cleanup takes longer than 24 hours. NH also requires submittal of a cleanup report within 30 days of completion. (MS).
	268.50(g)	1202.02(l)—NH did not adopt an analog to this provision. (MS).
	270.14(a)	304.11. 202 (waivers)—NH requires a NH registered PE to prepare and stamp plans. (MIS).
	273.13(b) introductory paragraph.	1102.03(b). 1110.04. 1110.06—NH has additional requirements for pesticides: storage on impervious surfaces and away from floor drains and manholes unless secondary containment is provided; preparedness and prevention; security; additional training; and employee health and safety. (MS).
75 FR 12989–13009, 75 FR 31,716–31,717; March 18, 2010, June 4, 2010		
CL 223: Hazardous Waste Technical Corrections and Clarifications.	260.10	104.16—NH rules and statutes regulate facilities in existence on July 1, 1980, instead of November 19, 1980. (BIS).
	262.42(c)	511.02(e)—EQ. 511.02(c)—NH requires a generator whose shipment was rejected and returned on a paper manifest or on an electronic manifest that was printed for the generator's signature to submit the completed manifest within 5 days of receipt of the shipment. (MS).
	262.42(c)(2)	511.02(e)(2)—NH requires all generators to submit exception reports within 45 days. (MS).
	263.12	104.67. 304.11. 601.01(b)(2) & (3). 701.01(a)—NH requires a transfer facility permit. NH has not yet adopted 40 CFR pt. 267. (BIS).
	264.56(d)(2) introductory text	706.02—NH requires cleanup of HW discharges within 24 hours or submittal of a cleanup plan if cleanup takes longer than 24 hours. NH also requires submittal of a cleanup report within 30 days of completion. (MS).
81 FR 85696; November 28, 2016, as amended August 29, 2017 (82 FR 41015) and August 6, 2018 (83 FR 38263)		
CL 236: Imports and Exports of Hazardous Waste.	261.4(e)(1) and 261.4(e)(4)	401.03(b)(14)—NH's maximum quantity of non-acute HW is 250 kg. (MS).

TABLE 2—NEW HAMPSHIRE'S MORE STRINGENT/BROADER IN SCOPE ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Federal requirements	Description of checklist number and federal requirement	Analogous state authority
	266.70(b)	709.01(c), 804.02(e), and 808.01—(EQ). 808.02(c)—NH generators are subject to certification requirements. (BIS). 808.03(d)—NH's transporters are subject to registration requirements. (BIS).
83 FR 61552; November 30, 2018		
CL240: Safe Management of Recalled Airbags.	262.14(a)(5)(xi)	503.01 508—NH has not adopted an exemption for generators of <100 kg/mo. (MS).
84 FR 5816; February 22, 2019		
CL 241: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine.	261.4(a)(1)(ii) 262.14(a)(5)(ix) 262.14(a)(5)(x) 266.501(a) 266.501(b) 266.502(a)(1)(i)–(ii) 266.502(a)(2) 266.502(h) 266.502(i) 266.502(j)(1) 266.504(b)(2) 266.504(d) 266.508(a)(2) 266.510(c)(7) 266.510(c)(9) 266.510(c)(10)(ii)	NH has not adopted this exclusion. (BIS) 511.01(g)(1)—(EQ) 503.01,508—NH has not adopted an exemption for generators of <100 kg/mo. (MS). 511.01(g)(2)—(EQ). 503.01,508—NH has not adopted an exemption for generators of <100 kg/mo. (MS). 501.01(e). 1302.02(b)(1)—NH bases generator category on both HW generation and accumulation. (MS). 501.02(j) & (k). 1302.02(b)(1)—NH bases generator category on both HW generation and accumulation. (MS). 1302.02(c)(1)—NH requires notification within 60 days. (MS). 1302.02(c)(1)—NH requires VSQGs to notify and provide waste numbers on notification forms. (MS). 1302.02(c)(3)—NH requires healthcare facilities (HFs) to submit a manifest copy within 5 days if rejected shipment involves a paper manifest or an electronic manifest printed for HF's signature. (MS). 1302.02(c)(4)—NH requires a quarterly report that includes data required by EPA's biennial report plus additional info. (MS) NH assesses fees on non-recycled HW shipped offsite. (BIS). 1302.02(c)(5)—NH requires HFs who use a paper manifest to keep both the generator copy and facility copy unless using e-manifest system for recordkeeping. (MS). NH requires that for electronic manifests printed for HF's signature, HF must keep signed paper copy. For paper manifests, HF with e-manifest system access must keep signed paper copy until receipt by designated facility is verified in the system. (EQ). 1302.02(e)(3)—NH requires the receiving FQG to provide the NHSQG's EPA ID#. (MS). 1302.02(e)(6)—NH requires LTCFs with 20 beds or fewer to determine Subpart P applicability by determining their generator category. (MS). 1302.02(i)(1)—NH requires HFs and reverse distributors (RDs) who use a paper manifest or an electronic manifest printed for HF/RD's signature to submit copy to DES within five days. HF/RDs must keep both the generator copy and facility copy unless using e-manifest system for recordkeeping. (MS). NH requires for electronic manifests printed for HF/RD's signature, HF/RD must keep signed paper copy. For paper manifests, HF/RD with e-manifest system access must keep signed paper copy until receipt by designated facility is verified in the system. (EQ). 1302.02(j)(5)—NH requires RD to submit manifest copy within five days if rejected shipment involves a paper manifest or an electronic manifest printed for RD's signature. (MS) 1302.02(j)(7)—NH requires a quarterly report that includes data required by EPA's biennial report plus additional info. (MS). NH assesses fees on non-recycled HW shipped offsite. (BIS). 1302.02(j)(8)—NH requires RDs using a paper manifest to keep both the generator copy and facility copy unless using e-manifest system for recordkeeping. (MS). NH requires for electronic manifests printed for RD's signature, RD must keep signed paper copy. For paper manifests, RD with e-manifest system access must keep signed paper copy until receipt by designated facility is verified in the system. (EQ).
84 FR 67202; December 9, 2019		
CL 242: Universal Waste Regulations: Addition of Aerosol Cans.	273.9 "Large quantity handler of universal waste". 273.13(c)(2)(iii)–(iv)	1101.03(c) and (f)—In NH a UW handler who accumulates 20,000 kg or more is defined as a "very large quantity handler" and must meet the additional requirements in 1105. NH is applying for authorization for CL 209. (MS). 1111.03(b)(1)—NH requires containers to meet requirements of 507 instead of 40 CFR 260–272. MS provisions include labeling, storage on an impervious surface, secondary containment for wastes with free liquids if floor drains are present, requirements for outside storage, and more (e.g., labeling, inspections, personnel training, accumulation time limits) depending on generator category. In a future rulemaking, NH will clarify that containers must meet applicable requirements of Env-Hw 100–800 and 1200. (MS).

TABLE 2—NEW HAMPSHIRE'S MORE STRINGENT/BROADER IN SCOPE ANALOGS TO THE FEDERAL REQUIREMENTS—
Continued

Federal requirements	Description of checklist number and federal requirement	Analogous state authority
	273.33(c)(2)(iii)–(iv)	1111.03(b)(1)—NH requires containers to meet requirements of 507 instead of 40 CFR pts. 260–272. MS provisions include labeling, storage on an impervious surface, secondary containment for wastes with free liquids if floor drains are present, requirements for outside storage, and more (<i>e.g.</i> , labeling, inspections, personnel training, accumulation time limits) depending on generator category. In a future rule-making, NH will clarify that containers must meet applicable requirements of Env-Hw 100–800 and 1200. (MS).
79 FR 7518; February 7, 2014, and 83 FR 420; January 3, 2018		
Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules (Checklists 231 and 239).	263.20(a) intro, (1)–(9)	604.01(f)—NH requires transporters to notify the generator if post-receipt manifest corrections are made to paper manifests or to electronic manifests that were printed for the generator's signature. (MS).
	264.71(l) intro, (1)–(5)	703.02(d)—NH requires facilities to notify the generator if manifest corrections are made to paper manifests or to electronic manifests that were printed for the generator's signature. (MS).
	265.71(l) intro, (1)–(5)	703.02(d)—NH requires facilities to notify the generator if manifest corrections are made to paper manifests or to electronic manifests that were printed for the generator's signature. (MS).

EPA cannot delegate certain federal requirements associated with the federal manifest registry system, the electronic manifest system, and international shipments (*i.e.*, import and export provisions). New Hampshire has adopted these requirements and appropriately preserved the EPA's authority to implement them (See Special Consolidated Checklist for the Hazardous Waste Electronic Manifest Rules: 102.02(b)(2); 103.39–40; 104.10; 102.01; 510.01(a); 510.02(c); 604.01(a); 203.03(c); 703.01(a), CL214 Corrections to Errors in the Code of Federal Regulations: 102.02(a); 102.02(b)(1); 1202.02(a)(1), CL238 Determinations for Hazardous Waste Export and Import Documents: 401.03(b)(36), 510.06, 601.01(b)(5), 705.01(b)(1), 808.02(e), 808.03(e), 808.04(a)(3), 809.03(c), 809.05, 1101.02(c), 1102.08(a), and 1106.07(a), CL236 Imports and Exports of Hazardous Waste).

There are several Federal rules that have been vacated, withdrawn, or superseded. As a result, authorization of these rules may be moot. However, for purposes of completeness, these rule checklists are included here with an explanation as to the rule's status in New Hampshire. These checklists include: CL 216: Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthetic Gas (73 FR 57, January 2, 2008); CL 221: Expansion of RCRA Comparable Fuel Exclusion (73 FR 77954, December 19, 2008); CL 224: Withdrawal of the Emission Comparable Fuel Exclusion (75 FR 33712, June 15, 2010); and CL 234: Vacatur of the Comparable Fuels Rule and the Gasification Rule (80 FR 18777, April 8, 2015)—CLs 216, 221, and 224 have been

vacated. CL 234 implements the vacatur of these provisions. New Hampshire did not adopt the exclusions contained in CLs 216, 221, or 224; therefore, the adoption of CL 234 in New Hampshire would be inconsequential. New Hampshire's authorized program continues to be equivalent to and no less stringent than the Federal program without having to make any conforming changes pursuant to these rule checklists.

I. Who handles permits after the authorization takes effect?

When the final authorization takes effect, New Hampshire will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer and enforce any RCRA and HSWA (Hazardous and Solid Waste Act) permits or portions of permits that it has issued in New Hampshire prior to the effective date of this authorization until the State incorporates the terms and conditions of the federal permits into the State RCRA permits. EPA will not issue any new permits, or new portions of permits, for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement, and issue permits for any HSWA requirements for which New Hampshire is not yet authorized. EPA has the authority to enforce state-issued permits after the State is authorized.

J. What is codification and will the EPA codify New Hampshire's hazardous waste program as authorized in this rule?

Codification is the process of placing citations and references to the State's statutes and regulations that comprise

the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by adding those citations and references to the authorized State rules in 40 CFR part 272. EPA is not proposing to codify the authorization of New Hampshire's changes at this time. However, EPA reserves the ability to amend 40 CFR part 272, subpart UU for the authorization of New Hampshire's program at a later date.

K. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Therefore, this action is not subject to review by OMB. This action is not an Executive Order 14094 (88 FR 21879, April 11, 2023) regulatory action because actions such as the authorization of New Hampshire's revised hazardous waste program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates

Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), the EPA grants a state’s application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in taking this action, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of this action in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this action authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, this rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 8, 2023.

David W. Cash,

Regional Administrator, U.S. EPA Region 1.

[FR Doc. 2023–17387 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R08–RCRA–2023–0033; FRL–10606–02–R8]

Montana: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Montana Department of Environmental Quality has applied to the Environmental Protection Agency (EPA) for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined

that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State’s changes through this direct final action. The EPA uses the regulations entitled “Approved State Hazardous Waste Management Programs” to provide notice of the authorization status of State programs and to incorporate by reference those provisions of State statutes and regulations that will be subject to the EPA’s inspection and enforcement. This rule also codifies in the regulations the approval of Montana’s hazardous waste management program and incorporates by reference the authorized provisions of the State’s regulations.

DATES: This direct final rule is effective on October 16, 2023 unless EPA receives adverse written comment by September 14, 2023. If the EPA receives any such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. The Director of the Federal Register approves the incorporation by reference as of October 16, 2023, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2023–0033; FRL–10606–02–R8 by one of the following methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. *Email:* lin.moye@epa.gov.

3. *Fax:* (303) 312–6341 (prior to faxing, please notify the EPA contact listed below).

4. *Mail, Hand Delivery or Courier:* Moye Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, Mailcode 8P–R, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Courier or hand deliveries are only accepted during the Regional Office’s normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: EPA must receive your comments by September 14, 2023. Direct your comments to EPA–R08–RCRA–2023–0033; FRL–10606–02–R8. The EPA’s policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov>, or email. The Federal <https://www.regulations.gov> website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any CD you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the <https://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically through <https://www.regulations.gov>. For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Moya Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129; telephone number: (303) 312-6667; email address: lin.moya@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authorization of Revisions to Montana's Hazardous Waste Program

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the

changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

B. What authorization decisions has the EPA made in this rule?

On May 31, 2022, Montana submitted a final complete program revision application seeking authorization of changes to its hazardous waste program. The EPA concludes that Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana final authorization to operate its hazardous waste program with the changes described in the authorization application. Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs), and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA), for all areas within the State, except for (1) lands located within formal Indian Reservations within or abutting the State of Montana, including Blackfeet Indian Reservation, Crow Tribe of Montana Indian Reservation, Flathead Indian Reservation, Fort Belknap Indian Reservation, Fort Peck Indian Reservation, Northern Cheyenne Indian Reservation, Rocky Boy's Indian Reservation, (2) any land held in trust by the United States for an Indian tribe, (3) and any other land, whether on or off a reservation that qualifies as “Indian country” within the meaning of 18 U.S.C. 1151. New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Montana, including issuing permits, until Montana is authorized to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Montana subject to RCRA will have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. The State of Montana will continue to have enforcement responsibilities under its

State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and
- Take enforcement actions after notice to and consultation with the State.

This action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which the State of Montana is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. Why is the EPA using a direct final rule?

The EPA is publishing this rule without a prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule allowing the public an opportunity to comment. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

E. What happens if EPA receives comments opposing this action?

If EPA receives comments that oppose this authorization, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a later **Federal Register**. You will not have another opportunity to comment, therefore, if you want to comment on this action, you must do so at this time.

F. For what has Montana previously been authorized?

Montana initially received final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: January 19, 1994, effective March 21, 1994 (59 FR 2752); October 25, 1996, effective December 24, 1996 (61 FR 55223); December 26, 2000, effective December 26, 2000 (65 FR 81381); September 30, 2005, effective November 29, 2005 (70 FR 57152); and,

April 27, 2009, effective June 26, 2009 (79 FR 18997).

G. What changes is EPA authorizing with this action?

On May 31, 2022, the State of Montana submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose

this action, that Montana's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Montana final authorization for the following changes:

1. Program Revision Changes for Federal Rules

The State of Montana revisions consist of regulations which specifically govern Federal hazardous waste

revisions promulgated between July 1, 2006 and June 30, 2021, Revision Checklists 214, 215, 217, 218, 220, 222 and 223, Rule 225, and Revision Checklists 226 through 243 (RCRA Clusters XVII through XXIX). The State requirements from its Hazardous Waste Rules, Administrative Rules of Montana (ARM), Environmental Quality, Title 17, Chapter 53, sections 17.53.101 through 17.53.1502 are listed in the chart below.

Description of Federal requirement	Federal Register date and page	Analogous State authority
1. Corrections to Errors in the Code of Federal Regulations (Checklist 214).	71 FR 40254; 07/14/06	Administrative Rules of Montana (ARM) Title 17, Chapter 53, 17.53.301(1), 17.53.404(1), 17.53.405(5), 17.53.501(1), 17.53.601(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1501(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1), 17.53.1401(1).
2. Cathode Ray Tubes Rule (Checklist 215)	74 FR 42928; 07/28/06	ARM 17.53.301(1), 17.53.501(1), 17.53.107(3).
3. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II) Amendments (Checklist 217).	73 FR 18970; 04/08/08	ARM 17.53.801(1), 17.53.1001(1).
4. F019 Exemption for Wastewater Treatment Sludges from Auto Manufacturing Zinc Phosphating Processes (Checklist 218).	73 FR 31756; 06/04/08	ARM 17.53.501(1).
5. Academic Laboratories Generator Standards (Checklist 220).	73 FR 72912; 12/1/08	ARM 17.53.501(1), 17.53.601(1).
6. OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Checklist 222).	75 FR 1236; 01/08/10	ARM 17.53.601(1), 17.53.107(3), 17.53.602(7), 17.53.602(10), 17.53.701(1), 17.53.801(1), 17.53.107(3), 17.53.901(1), 17.53.1001(1).
7. Hazardous Waste Technical Corrections and Clarifications (Checklist 223).	75 FR 1298; 03/18/10 75 FR 31713–31717; 06/04/10.	ARM 17.53.301(1), 17.53.501(1), 17.53.601(1), 17.53.701(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1101(1), 17.53.1201(1).
8. Removal of Saccharin and Its Salts from the List of Hazardous Constituents (Rule 225).	75 FR 78918; 12/17/10	ARM 17.53.501(1), 17.53.1101(1).
9. Academic Laboratories Generator Standards Technical Corrections (Checklist 226).	75 FR 79304; 12/20/10	ARM 17.53.601(1).
10. Revision of the Land Disposal Treatment Standards for Carbamate Wastes (Checklist 227).	76 FR 34147; 06/13/11	ARM 17.53.1101(1).
11. Hazardous Waste Technical Corrections and Clarifications Checklist 228).	77 FR 22229; 04/13/12	ARM 17.53.501(1), 17.53.1001(1).
12. Solvent Contaminated Wipes (Checklist 229)	78 FR 46448; 07/31/13	ARM 17.53.301(1), 17.53.501(1).
13. Conditional Exclusion for Carbon Dioxide (CO2) Streams in Geologic Sequestration Activities (Checklist 230).	79 FR 350; 1/3/14	ARM 17.53.301(1), 17.53.501(1).
14. Hazardous Waste Electronic Manifest Rules (Special Consolidated Checklist for Checklists 231 and 239A).	79 FR 7518; 02/07/14	ARM 17.53.107(2), 17.53.107(3), 17.53.201, 17.53.404(1), 17.53.405, 17.53.601(1), 17.53.602(11) (removed), 17.53.701(1), 17.53.801(1), 17.53.802(5), 17.53.901(1), 17.53.902(6).
	83 FR 420; 01/03/18	
15. Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule (Checklist 232).	79 FR 36220; 6/26/14	ARM 17.53.107(3), 17.53.301(1), 17.53.501(1).
16. Revisions to the Definition of Solid Waste (Checklists 233A, B, C, D2, and E).	80 FR 1694–1814; 01/13/15	ARM 17.53.301(1), 17.53.404(1), 17.53.501(1), 17.53.1201(1).
	83 FR 24664–24671; 05/30/18.	
17. Response to Vacatures of the Comparable Fuels Rule and the Gasification Rule (Checklist 234).	80 FR 18777; 4/8/15	ARM 17.53.501(1).
18. Disposal of Coal Combustion Residuals from Electric Utilities (Checklist 235).	80 FR 21302; 4/17/15	ARM 17.53.501(1).
19. Imports and Exports of Hazardous Waste (Checklist 236).	81 FR 85696; 11/28/16	ARM 17.53.105(3), 17.53.107(3), 17.53.301(1), 17.53.404(1), 17.53.501(1), 17.53.601(1), 17.53.602(7), 17.53.602(8), 17.53.602(9), 17.53.602(10), 17.53.701(1), 17.53.702(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1501(1), 17.53.1301(1).
	82 FR 41015; 8/29/17	
	83 FR 38263; 8/6/18	

Description of Federal requirement	Federal Register date and page	Analogous State authority
20. Hazardous Waste Generator Improvements Rule (Checklist 237).	81 FR 85732; 11/28/16	ARM 17.53.111(2) introductory paragraph and (2)(a), 17.53.301(1), 17.53.301(2)(q), 17.53.404(1), 17.53.405(5), 17.53.501, 17.53.502(5), 17.53.601(1), 17.53.602(2) through (4), (7), and (9) through (13), 17.53.603, 17.53.604, 17.53.701(1), 17.53.702(1), 17.53.801(1), 17.53.802(3), (4), and (6), 17.53.803, 17.53.901(1), 17.53.902(4) through (6), 17.53.903, 17.53.1001(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1), 17.53.1401(1), 17.53.1501(1).
21. Confidentiality Determinations for Hazardous Waste Export and Import Documents (Checklist 238).	83 FR 60894; 12/26/17	ARM 17.53.107(3), 17.53.201, 17.53.404, 17.53.501(1), 17.53.601(1), 17.53.602(7).
22. Safe Management of Recalled Airbags (Checklist 240).	83 FR 61552; 11/30/18	ARM 17.53.301(1), 17.53.501(1), 17.53.601(1).
23. Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (Checklist 241).	84 FR 5816; 02/22/19	ARM 17.53.111(7), 17.53.501(1), 17.53.601(1), 17.53.801(1), 17.53.901(1), 17.53.1001(1), 17.53.1002(9), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1).
24. Universal Waste Regulations; Addition of Aerosol Cans Checklist 242).	84 FR 67202; 12/9/19	ARM 17.153.301(1), 17.53.501(1), 17.53.801(1), 17.53.901(1), 17.53.1101(1), 17.53.1201(1), 17.53.1301(1).
25. Modernizing Ignitable Liquids Determinations (Checklist 243).	85 FR 40594; 07/7/20	ARM 17.53.105(3), 17.53.404(1), 17.53.501(1).

2. State-Initiated Changes

Montana has made amendments to its regulations that are not directly related to any of the Federal rules addressed in Item G.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the Administrative Rules of Montana (ARM), as amended, effective May 14, 2022: ARM 17.53.105(4); 17.53.107(1) introductory paragraph; 17.53.111(1); 17.53.111(3); 17.53.111(4) (except phrase addressing fees); 17.53.111(5); 17.53.406; 17.53.602(1); 17.53.1202(1); 17.53.1202(21); and 17.53.1303. In addition, effective December 25, 2009, Montana made State-initiated changes to adopt 40 CFR part 267 by reference at ARM 17.53.1501 and 17.53.1502. The State had previously adopted the final rule, Standardized Permit for RCRA Hazardous Waste Management Facilities, (September 8, 2005, 70 FR 53419) without the 40 CFR part 267 provisions. Sections 17.53.1501 and 17.53.1502 have been reviewed by EPA and are acceptable to be authorized.

H. Where are the revised State rules different from the Federal rules?

The Montana revisions being authorized in this rule include provisions that contain purely Federal functions which are not delegable to States. The non-delegable Federal program areas include import/export requirements reserved as part of the Federal foreign relations function, and manifest registry and electronic manifest functions administered solely by the EPA. Montana has appropriately adopted these provisions by leaving the authority with the EPA for implementation and enforcement.

When revised State rules differ from the Federal rules in the RCRA State authorization process, EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, States cannot receive Federal authorization for such regulations, and they are not federally enforceable.

We consider the following State requirements to be more stringent than the Federal requirements: ARM 17.53.502(5), 17.53.602(3), (10), (11), and (12), 17.53.603(1) introductory

paragraph, 17.53.603(2), (3), and (4) because Montana requires an annual report in lieu of the Federal biennial reporting requirement. Additionally, we consider the following State requirement to be broader in scope than the Federal: ARM 17.53.111(6) because Montana requires transporters obtain a registration from the State.

I. Who handles permits after the authorization takes effect?

The State of Montana will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits, which we issued prior to the effective date of this authorization, until Montana has equivalent instruments in place. EPA will continue to implement and issue permits for HSWA requirements for which Montana is not yet authorized.

J. How does today's action affect Indian Country (18 U.S.C.1151) in Montana?

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of Montana:
 - a. Blackfoot Tribe of the Blackfoot Indian Reservation
 - b. Crow Tribe of Montana
 - c. Confederated Salish and Kootenai Tribes of the Flathead Reservation

- d. Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- e. Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation
- f. Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation
- g. Chippewa Cree Indians of the Rocky Boy's Reservation
- 2. Any land held in trust by the U.S. for an Indian tribe; and
- 3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where the EPA will continue to implement and administer the RCRA program.

II. Incorporation by Reference

A. What is codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the Federal regulations concerning the same matter with the result that after authorization, EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program, which is Federally enforceable in accordance with sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What is the history of the codification of Montana's hazardous waste management program?

The EPA first incorporated by reference Montana's authorized hazardous waste program effective January 31, 1986 (51 FR 3954) and program revisions effective March 8, 2006 (71 FR 11536). In this action, EPA is revising Subpart BB of 40 CFR part 272 to include the authorization revision actions described in this document.

C. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference of the authorized hazardous waste management program of the State of Montana. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Montana rules described in section I.G. of this preamble and set forth in the amendments to 40 CFR 272.1351. The EPA has made, and will continue to make, these documents available electronically through <https://www.regulations.gov>. For alternative access to docket materials, please contact the person identified in the **ADDRESSES** section of this preamble.

This action codifies EPA's authorization of Montana's base hazardous waste management program and its revisions to that program. The codification reflects the State program that would be in effect at the time EPA's authorized revisions to the Montana hazardous waste management program addressed in this direct final rule become final. This action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** documents referenced in section I.F. of this document concerning revisions to the authorized program in Montana.

The EPA is incorporating by reference EPA's approval of Montana's hazardous waste management program by amending Subpart BB to 40 CFR part 272. The action amends § 272.1351 and incorporates by reference Montana's authorized hazardous waste regulations, as amended, effective May 14, 2022. Section 272.1351 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.1351 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program in accordance with Subtitle C of RCRA.

D. What is the effect of Montana's codification on enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable

statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference Montana's inspection and enforcement authorities, nor are those authorities part of Montana's approved State program which operates in lieu of the Federal program. 40 CFR 272.1351(c)(2) lists these authorities for informational purposes, and because EPA also considered them in determining the adequacy of Montana's procedural and enforcement authorities. Montana's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

E. What State provisions are not part of the codification?

The public is reminded that some provisions of Montana's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));

(2) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the Federal statutory enforcement and procedural authorities.

State provisions that are "broader in scope" than the Federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, EPA lists in 40 CFR 272.1351(c)(3) the Montana statutory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. While "broader in scope" provisions are not part of the authorized program and cannot be enforced by EPA, the State may enforce such provisions under State law.

F. What will be the effect of codification on Federal HSWA requirements?

With respect to any requirement(s) pursuant to HSWA for which the State has not yet been authorized, and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those Federal HSWA

standards until the State is authorized for those provisions.

The codification does not affect Federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the Federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

III. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes and codifies State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes and codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes and codifies State

requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State’s application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing

Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This action will be effective October 16, 2023.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 8, 2023.

KC Becker,

Regional Administrator, Region 8.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under 40 CFR part 271 to the State of Montana for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.2 to read as follows:

§ 272.2 Incorporation by reference.

(a) Material listed as incorporated by reference in part 272 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**.

(b) Copies of materials incorporated by reference may be inspected 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: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>. Copies of materials incorporated by reference may be obtained or inspected at the EPA Docket Center, Office of Land and Emergency Management Docket (by scheduled appointment only), located at WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, or send mail to Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and at the library of the appropriate Regional Office listed below:

(1) Region 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): 5 Post Office Square, 1st floor, Boston, MA 02109–3912; phone number: (617) 918–1313,

(2) Region 2 (New Jersey, New York, Puerto Rico, Virgin Islands): Federal Office Building, 290 Broadway, 23rd Floor, New York, NY 10007–1866; phone number: (212) 637–3185),

(3) Region 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia): Four Penn Center, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2852; phone number: (215) 814–5254,

(4) Region 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): 61 Forsyth Street SW, Sam Nunn Atlanta Federal Center, 9th Floor, Atlanta, GA 30303, (513) 569–7703,

(5) Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin):

77 West Jackson Boulevard, Chicago, IL 60604; phone number: (312) 886–6822,

(6) Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): 1201 Elm Street, Suite 500, Dallas, Texas 75270–2102; phone number: (214) 665–853,

(7) Region 7 (Iowa, Kansas, Missouri, Nebraska): 11201 Renner Boulevard, Lenexa, Kansas 66219; phone number: (919) 541–2777,

(8) Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): 1595 Wynkoop St., Denver, CO 80202–2405; phone number: (303) 312–6667,

(9) Region 9 (Arizona, California, Hawaii, Nevada, Guam, American Samoa, Commonwealth of the Northern Mariana Islands): 75 Hawthorne Street, San Francisco, CA 94105; phone number: (415) 947–4406,

(10) Region 10 (Alaska, Idaho, Oregon, Washington): 1200 Sixth Avenue, Seattle, WA 98101; phone number: (206) 553–1289.

(c) For an informational listing of the state and local requirements incorporated in this part, see appendix A to this part.

■ 3. Revise § 272.1351 to read as follows:

§ 272.1351 Montana State-Administered Program: Final Authorization.

(a) *History of the State of Montana authorization.* Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Montana has final authorization for the following elements as submitted to EPA in Montana's base program application for final authorization which was approved by EPA effective on July 25, 1984. Subsequent program revision applications were approved effective on March 21, 1994, December 24, 1996, December 26, 2000, November 29, 2005, June 26, 2009, and October 16, 2023.

(b) *Enforcement authority.* The State of Montana has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations*—(1) *Incorporation by reference.* The Montana regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et*

seq. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For the availability of this information at the National Archives and Records Administration and at the EPA, see § 272.2(b). You may obtain copies of the Montana regulations that are incorporated by reference in this paragraph from Montana Secretary of State, Administrative Rules Services, P.O. Box 202801 Helena, MT 59620–2801, Phone: (406) 438–6122.

(i) EPA-Approved Montana Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated November 2022.

(ii) [Reserved]

(2) *Legal basis.* The following provisions provide the legal basis for the State's implementation of the hazardous waste program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Montana Code Annotated (MCA) 2021, Title 2, “Government Structure and Administration,” Chapter 3, Public Participation in Governmental Operations, sections 2–3–102 introductory paragraph through 2–3–102(2), 2–3–103(1), 2–3–104, 2–3–105, 2–3–111, 2–3–112, 2–3–221, 2–3–301; Chapter 4, Administrative Procedure Act, sections 2–4–103, 2–4–307, 2–4–315; Chapter 6, Public Records, sections 2–6–1003 and 2–6–1006; Chapter 15, Executive Branch Officers and Agencies, sections 2–15–3501 and 2–15–3502.

(ii) Montana Code Annotated (MCA) 2022, Title 25, Civil Procedure: Chapter 20, Rules of Civil Procedure, Rule 24(a) and (b).

(iii) Montana Code Annotated (MCA) 2021, Title 27, Civil Liability, Remedies, and Limitations: Chapter 30, Nuisances, section 27–30–204.

(iv) Montana Code Annotated (MCA) 2021, Title 30, Trade and Commerce: Chapter 14, Unfair Trade Practices and Consumer Protection, sections 30–14–402, *et seq.*

(v) Montana Code Annotated (MCA) 2021, Title 75, Environmental Protection: Chapter 10, Waste and Litter Control, sections 75–10–107, 75–10–203, 75–10–402(3), 75–10–403 (except 75–10–403(13)), 75–10–404(1) introductory paragraph and (1)(a), 75–10–404(1)(b) through (e), 75–10–404(2), 75–10–405 (except 75–10–405(1)(i), (1)(j) and (2)(a)), 75–10–406, 75–10–408, 75–10–409, 75–10–410, 75–10–411, 75–10–413, 75–10–414, 75–10–415, 75–10–416, 75–10–417, 75–10–418, 75–10–419, 75–10–420, 75–10–421, 75–10–422, 75–10–424, 75–10–425, 75–10–426, 75–10–427, 75–10–441 and 75–10–442; Chapter 20, Major Facility Siting.

(vi) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality: Chapter 53, Hazardous Waste, sections 17.53.104, 17.53.201, 17.53.202, 17.53.206, 17.53.207, 17.53.208, 17.53.212, 17.53.213, 17.53.214, 17.53.215, 17.53.1202(6)(m) and (n), 17.53.1202(7).

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Montana Code Annotated (MCA) 2021, Title 75, Environmental Protection: Chapter 10, Waste and Litter Control, sections 75–10–403(13), 75–10–405(1)(i) and (j), 75–10–405(2)(a), 75–10–431, 75–10–432, 75–10–433, and 75–10–434.

(ii) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, sections 17.53.111(4) (phrase addressing fees), 17.53.111(6), 17.53.112, 17.53.113, 17.53.301(2)(p) (phrase addressing fees), 17.53.703, 17.53.1202(6)(l), and 17.53.1202(18).

(4) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region 8 and the State of Montana, signed by the State of Montana Department of Environmental Quality on August 22, 2018, and by the EPA Regional Administrator on August 2, 2018, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of legal authority.* Independent Legal Counsel Statement, accompanied by an Attorney General concurrence letter signed by the Attorney General of Montana on December 27, 1983 as amended June 7, 1984 and revisions, supplements and addenda to that Statement accompanied by Attorney General concurrence letters dated September 23, 1993, March 28, 1995, June 29, 1995, April 4, 2005, January 31, 2008 and May 31, 2022, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the entry “Montana” to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Montana

The regulatory provisions include: Administrative Rules of Montana, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, effective May 14, 2022, sections 17.53.101, 17.53.102, 17.53.105, 17.53.107, 17.53.111(1), 17.53.111(2), 17.53.111(3), 17.53.111(4) (except the phrase “and receives the registration fee required by ARM 17.53.113”), 17.53.111(5), 17.53.111(7), 17.53.301 (except the phrase addressing fees at 17.53.301(2)(p)), 17.53.404, 17.53.405, 17.53.406, 17.53.501, 17.53.502, 17.53.601, 17.53.602, 17.53.603, 17.53.604, 17.53.701, 17.53.702, 17.53.704, 17.53.706, 17.53.707, 17.53.708, 17.53.801, 17.53.802, 17.53.803, 17.53.901, 17.53.902, 17.53.903, 17.53.1001, 17.53.1002, 17.53.1003, 17.53.1004, 17.53.1101, 17.53.1102, 17.53.1201, 17.53.1202 (except 17.53.1202(6)(l), (6)(m), (6)(n), (7) and (18)), 17.53.1203, 17.53.1301, 17.53.1302, 17.53.1303, 17.53.1401, 17.53.1402, 17.53.1501, and 1502.

Copies of the Montana regulations that are incorporated by reference are available from the Montana Secretary of State, Administrative Rules Services, P.O. Box 202801, Helena, MT 59620–2801 (Phone: 406–438–6122)

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[FR Doc. 2023–17367 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56; FRS ID 160335]

Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) take steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, the Commission expects to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, the

Commission also amends its rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. The Commission expects that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to participate in the E-Rate program.

DATES: Effective September 29, 2023, except for §§ 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Johnny Roddy johnny.rodny@fcc.gov or Kate Dumouchel kate.dumouchel@fcc.gov in the Telecommunications Access Policy Division, Wireline Competition Bureau, 202–418–7400 or TTY: 202–418–0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION:

This is a synopsis of the Commission’s Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Report and Order (Order) in CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56, adopted July 20, 2023 and released July 21, 2023. The Commission also released a companion Further Notice of Proposed Rulemaking (FNPRM) in CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56, adopted July 20, 2023 and released July 21, 2023. The FNPRM published August 9, 2023 at 88 FR 53837. The full text of this document is available at the following internet address: <https://docs.fcc.gov/public/attachments/FCC-23-56A1.pdf>.

I. Introduction

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and Wi-Fi equipment to connect today’s students and library patrons with next-generation learning opportunities and services. In January 2022, the Commission began an initiative to increase Tribal libraries’ access to E-Rate support, recognizing the valuable role that these entities

serve in providing high-speed internet access to Tribal communities. The Commission first clarified that Tribal libraries are eligible to participate in the program and later launched a Tribal Library Pilot Program to ensure that Tribal library entities have equitable access to the E-Rate program. Building on those efforts, the Commission initiated a rulemaking proceeding in February 2023 to seek comment on additional rule changes to improve Tribal participation in the E-Rate program. The Commission takes steps to further enhance Tribal applicants' access to the E-Rate program through program simplifications and other changes that aim to encourage greater Tribal participation in the program. At the same time, the Commission takes steps to simplify the E-Rate processes, where appropriate, for other E-Rate applicants and seek comment on further possible rule changes suggested by commenters in a the *FNPRM*.

II. Discussion

2. Consistent with efforts to encourage more Tribes to participate in the E-Rate program, the Commission now takes steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, the Commission expects to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, the Commission also amends the rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. First, the Commission modifies the rules to allow Tribal college and university (TCU) libraries to apply for and receive E-Rate support, provided they are also serving as a public library in their community. Next, the Commission adopts a number of changes to simplify and improve the E-Rate application process for Tribal library and other applicants. The Commission also takes steps to enhance communication with Tribal Nations by providing additional outreach to Tribal entities and leaders and by adopting a definition of "Tribal" to better identify Tribal applicants. Finally, the Commission also adds a Tribal representative to the Universal Service Administrative Company (USAC) Board of Directors to ensure Tribal input into the administration and oversight of the federal USF and the universal service support programs. Taken together, the Commission expects that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to

participate in the E-Rate program. The Commission also seeks comment on additional rule changes and clarifications suggested by commenters to further streamline and improve the application process for all E-Rate applicants. The Commission considers certain of those suggestions in the *FNPRM*.

3. Based on a review of the record and consistent with the authority pursuant to section 254(h) of the Communications Act of 1934, as amended, the Commission adopts the proposal to make TCU libraries eligible for E-Rate support when they also serve as a public library in their community. Commenters that addressed this issue unanimously supported the rule change and provided evidence about how TCU libraries offer valuable library services to their communities.

4. The American Library Association (ALA) argues, for example, that TCU libraries like Ilisagvik College's Tuzzy Consortium Library do not just serve students, faculty, and staff, but also the wider community, even providing workforce and career programs to members of the public, and should therefore be permitted to draw on the E-Rate program support like any other library. During the April 13, 2023 Tribal Consultation and Listening Session, the Director of Education for the Inupiat Community of the Arctic Slope, Mark Roseberry, explained that their TCU library is responsible for serving their entire Alaskan community and that the library would greatly benefit from E-Rate funding. The American Indian Higher Education Consortium (AIHEC) noted that, of the 35 accredited TCUs, 31 open their libraries to the public as the only public library in their rural communities, acting as a vital resource in the communities they serve. AIHEC further commented that TCU libraries serve the public at their own expense despite facing internet connection costs ranging from 21 to 70 times the national average at much slower speeds. It noted that TCU libraries, such as Oglala Lakota College, provide a wide variety of services to the public for free, offering computers and internet access to community members who would not otherwise have access to the internet so that they can do homework, complete research, and find employment. The Commission finds that permitting TCU libraries that also serve as public libraries to receive E-Rate support will provide a meaningful benefit to Tribal communities, particularly where the TCU library may be the only library in its community. The Commission therefore will consider a TCU library eligible to apply for E-Rate support if it

serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community.

5. In making this change, the Commission seeks to balance the goal of improving broadband connectivity on Tribal lands with the duty as a responsible steward of limited universal service resources. The Commission therefore adopts limitations to ensure that E-Rate support is restricted to TCU library use only, and not to support the broader connectivity requirements of the higher education institution. For example, TCU libraries cannot request funding for services or equipment beyond the needs of the library, and any category two equipment must be installed within the eligible library only and cannot be installed in another location within the TCU. Commenters suggest that TCU libraries not be required to perform cost-allocation calculations because they are burdensome and would potentially deter TCU libraries from seeking support. To address this concern, accordingly, the Commission will not require TCU libraries to perform cost-allocation calculations of the college student and staff usage at the library versus public usage of bandwidth, as members of the college community are also members of the public. If, however, the TCU library is seeking E-Rate support for a portion of the total bandwidth used at the Tribal college or university, it will be required to calculate the bandwidth usage from other parts of the Tribal college or university, and include only the library portion of bandwidth use in its E-Rate funding request. Such limitations will ensure that E-Rate funding is not improperly provided to the other TCU buildings like classrooms and dormitories.

6. The State E-Rate Coordinators' Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters), in their comments, also suggest that a TCU library should only be eligible when there is no other Tribal library accessible to the community. The Commission is not convinced that this restriction is either necessary or meaningful. First, there are a very limited number of TCU libraries, which limits the impact of granting eligibility. It is also administratively challenging to determine whether another Tribal library is "accessible" to the community. Finally, the Commission does not impose similar restrictions in the E-Rate program to

limit funding when two or more libraries may be serving the same community. If an otherwise eligible library is providing services to the public and members of the public are making use of those services, the presence of another eligible library accessible to that community has no impact on the eligibility of either library. For these reasons, the Commission declines to adopt this restriction at this time.

7. The Commission finds that the action is consistent with its statutory authority under section 254(h) of the Communications Act to enhance access to advanced telecommunications and information services for libraries. In defining which libraries would be eligible for E-Rate support in 1997, the Commission initially adopted rules barring all college and university libraries from eligibility so as to guard against “institutions of higher learning [that] could assert that their libraries, and thus effectively their entire institutions, were eligible for support,” finding it inconsistent with congressional intent that funding would flow to an institution of learning only if it is an elementary or secondary school. Here, the presence of other program protections, as well as the very limited number of TCUs and the value of the services they provide to their Tribal communities persuade the Commission to change the rules and ensure that TCU libraries that also serve as a public library are not barred from eligibility. Though one commenter suggested granting eligibility to non-TCU libraries at small colleges or in rural areas, the Commission does not have a sufficient record to evaluate this issue and seeks further comment in the *FNPRM*.

8. Allowing TCUs that serve as public libraries to participate in E-Rate is also consistent with the federal government’s special treatment of TCUs. TCUs are unique higher education institutions that are controlled or chartered by a federally recognized Tribe, governed by a board of whose members are a majority Indian, and have a majority of Indians as its student body. Congress provides support for TCUs as part of its responsibility to provide for Indian education and facilitate its policy of enabling Tribal control of all matters relating to the education of Indian students. Congress has stated that the federal government has a special responsibility, as part of its overall trust responsibility to Indian Tribes, for the education of Indian students, and the federal government has long recognized and “charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.

Accordingly, TCUs are unique higher education institutions that are entitled to special treatment from the federal government based on their trust relationship between the United States and Indian Tribes and their mission of providing education to Indian students.

9. Building on the Commission proposals in the *Tribal E-Rate NPRM*, 88 FR 14529, March 9, 2023, the Commission implements several measures to streamline and simplify the E-Rate application process for Tribal libraries and other similarly situated applicants. First, the Commission streamlines the application process for libraries making small purchases. Next, the Commission increases the category two discount rate for Tribal library applicants with the most need, helping to offset the costs of in-building equipment and services. The Commission also increases the minimum amount of funding that is available for category two purchases, with the goal of encouraging Tribal libraries that do not currently participate in the program to apply for E-Rate support. And finally, the Commission provides guidance on a number of cost-allocation calculation issues that applicants have raised to reduce the administrative burden and streamline the E-Rate program overall. Collectively, the Commission expects these changes to contribute to the Commission’s ongoing goals of both improving and streamlining the program, and reducing barriers to accessing E-Rate funding for Tribal applicants.

10. To streamline the application process and simplify what is required for Tribal and other similarly-situated libraries making low-cost equipment purchases, the Commission adopts a competitive bidding exemption for library applicants seeking E-Rate support for category two equipment or services that total a pre-discounted amount of \$3,600 or less in a single funding year. The exemption will simplify the E-Rate application process because it will allow libraries to purchase low-cost category two services and equipment without filing an FCC Form 470 to solicit bids and waiting 28 days before entering into a contract. A category two funding request will be eligible for this exemption only if the total cost per library is \$3,600 or less; and the cost cannot be averaged across a number of libraries. By adopting this exemption to the competitive bidding process, the Commission believes it will be easier for smaller libraries, including Tribal libraries and libraries serving rural communities, to apply for E-Rate support when they are making limited

purchases of equipment to install or upgrade their Wi-Fi networks.

11. Commenters broadly supported expanding the existing competitive bidding exemption to include category two equipment and services, with suggestions ranging from support for the proposed \$3,600 exemption to eliminating the competitive bidding requirement entirely for Tribal entities. Because competitive bidding is essential to ensuring cost-effective purchasing in the E-Rate program, the Commission disagrees with commenters that suggest eliminating competitive bidding for Tribal entities entirely or where there is only one commercial service offering. At the same time, the Commission acknowledges that there are administrative costs associated with the E-Rate application process that can be burdensome, particularly for smaller entities. WTA explained that the low-cost category two services and equipment requests that small libraries often make also do not attract many bids in Tribal and rural areas. As commenters highlighted, the competitive bidding process can be challenging, especially for smaller libraries that have a limited staff. The Commission believes that adopting a \$3,600 exemption for libraries requesting category two equipment and services, matching the existing \$3,600 competitive bidding exemption for commercially available high-speed internet access services, strikes the right balance in simplifying the E-Rate application process, while retaining competitive bidding requirements where appropriate to ensure that limited E-Rate resources are spent efficiently and effectively. The Commission expects that the exemption will provide a meaningful benefit to Tribal, small, and rural library applicants by making it easier to receive funding for the Wi-Fi network equipment and services they need.

12. The Commission emphasizes that Tribal, and other small or rural library applicants may only request E-Rate support based on the actual cost of the equipment or service requested. The Commission cautions library applicants and service providers that cost-effective purchases are still required under this exemption in order to avoid waste in the program, and directs USAC to review the costs for equipment and services and to deny funding for purchases that are determined to not be cost-effective. In this regard, the Commission notes that it is generally straightforward to review and compare the costs of category two equipment, given that it tends to be widely commercially available, in order to ensure that

applicants are not seeking reimbursement for wasteful spending. The Commission also agrees with ALA that libraries may be subject to state and local requirements that help ensure that these low-cost purchases are still cost-effective. At present, a competitive bidding exemption for category two equipment and services costing less than \$3,600 allows the Commission to determine whether this small exemption can help libraries, but are not precluded from amending this level in the future. Based on limited record evidence, the Commission declines to extend the exemption to school entities at this time, but seeks further comment on this question in the *FNPRM*.

13. To increase Tribal library access to category two funding, the Commission increases the maximum discount rate for category two services for Tribal libraries to 90%, and increases the category two funding floor to \$55,000 for Tribal libraries. The Commission expects that these changes will help Tribal libraries to better meet their needs by reducing the share that they must pay for Wi-Fi networks and increasing the amount of support they can receive. At the same time, the Commission expects that the budgetary impact to the E-Rate program will be minimal. Taken together, the Commission expects that these measures will encourage greater participation in the E-Rate program by Tribal libraries that will offer a substantial benefit to the communities they serve, at minimal cost to the overall E-Rate program.

14. Tribal libraries tend to be under-resourced, operating on a limited budget to meet the diverse needs of their patrons. Many lack full-time, permanent library staff, much less a dedicated information technology (IT) staff member, often relying on the same IT staff that serves the larger Tribal government. While the Commission appreciates the request by applicants for more support for staffing costs, section 254 of the Communications Act constrains what services are eligible for E-Rate program support. Given these statutory constraints that limit the Commission's ability to fund certain costs, the Commission therefore has tried to identify other options to make internet connectivity more affordable for Tribal libraries. The Commission believes that a five percentage point increase to the maximum discount rate, from 85% to 90%, will make category two services more affordable, allowing Tribal libraries to stretch their limited budgets to better meet their community's Wi-Fi network connectivity needs. Commenters agreed

and broadly supported an increase, arguing that a higher discount rate would make a "big difference" to applicants and would result in important additional savings to Tribal applicants. In an April 13, 2023 Tribal Consultation and Listening Session, Tribal participants from Alaska noted that costs are very high in their remote communities, and that an increase in the discount rate would be especially helpful. By making category two services more affordable, the Commission expects that this increase will provide a meaningful benefit to Tribal libraries, that in turn, will encourage greater participation in the E-Rate program.

15. Increasing the category two funding floor to \$55,000 from the current floor of \$25,000 will also significantly aid Tribal libraries, where the remoteness of Tribal libraries on Tribal lands makes purchasing, installing, and maintaining equipment more difficult and, therefore, more costly. This means that Tribal libraries will be eligible to receive up to a pre-discount amount of \$55,000 in category two funding over a five-year period, based on the actual costs of the equipment or services. This increase is consistent with the Washington State Library suggestion that because category two costs of serving small remote libraries is approximately \$11,000 per year, setting the funding floor at \$55,000 for the five-year budget cycle may be more appropriate. These amounts were estimated based on a recent state pilot project to connect a number of single and very small library systems (fewer than five branches) with a basic Wi-Fi package. The National Tribal Telecommunications Association claimed that, in many of these remote and expensive-to-serve communities, the internet connection available through the Tribal library may be the only broadband available to community members and recommended increasing the funding floor to \$35,000. Based on this record evidence, the Commission agrees that an increase in minimum funding levels would help ensure that sufficient E-Rate funding is available to meet the Wi-Fi network requirements of Tribal libraries, and sets the category two services five-year funding floor at \$55,000. While the Commission limits the \$55,000 funding floor to Tribal library entities at this time, evaluating the impact of this change and considering whether to expand it to all libraries if there is a significant impact on the ability of libraries to meet the needs of their communities and is likely

to increase participation in the E-Rate program.

16. As part of the efforts to simplify the E-Rate program, the *Tribal E-Rate NPRM* sought comment on common cost-allocation issues that Tribal libraries and other non-Tribal applicants experienced, noting that cost allocation can be confusing for all E-Rate applicants and may pose particular challenges for Tribal libraries, especially those located in multipurpose buildings. Commenters provided a number of examples where cost allocation can complicate the application process. The Alaska Department of Education and Early Development and the Alaska State Library provided an example where a Tribal library is in a building with a room that is infrequently used as an office by an ineligible entity. They noted that relaxing the cost allocation requirements for minimal or occasional use of a single room from an eligible location could make a real difference for these applicants in small villages where the library may act as the hub of that community. Other commenters also provided a number of other scenarios wherein schools and libraries are required to cost allocate for the minimal internet usage of a variety of in-building offerings, such as offices, health kiosks and other healthcare services, childcare, pre-kindergarten, adult education, and vocational and technical classes available to the public. These and similar services, though ineligible themselves for E-Rate support, may provide significant benefit, while having a minimal impact on the school's or library's total internet usage and no real impact on schools and libraries' decision-making process in determining the level of internet service they need. Yet, schools and libraries that decide to offer these valuable services to their students, staff, and library patrons are required to conduct cost-allocation calculations to remove those portions of minimal ineligible internet usage by these services. In addition, if a school or library selects a product or service containing an ineligible component and that product or service is the most cost-effective means of receiving the eligible component functionality, those ineligible components are ancillary, and costs do not need to be allocated between the eligible and ineligible components.

17. The Commission agrees with commenters that conducting cost allocations to exclude costs associated with minimal ineligible use or service components can be challenging, especially with regards to services. As a means of providing a safe harbor, the Commission adopts a presumption that

if at least 90% of an applicant's requested internet service is being used for eligible purposes, the remaining ineligible use of the internet service will be presumed to be ancillary and, therefore, cost allocation is not required. This does not mean that the Commission currently finds healthcare, childcare services, or services for students under the age of three to be eligible for E-Rate support, nor does it mean that if less than 90% of an applicant's requested internet service is being used for eligible purposes that the ineligible portion cannot be demonstrated to be ancillary. However, the Commission agrees with commenters that if an applicant selected the most cost-effective internet service offering to meet its needs, then the minimal ineligible use of that internet service should be treated as ancillary and cost allocation is not required. In this regard, the Commission emphasizes that applicants may request only the amount of bandwidth needed for eligible use. The Commission therefore determines that permitting minimal ancillary use, without requiring cost allocation, will not result in waste or additional costs to the E-Rate program, because applicants may only request what they need to support eligible uses. The Commission expects this finding will provide clarity to applicants about when an ineligible use of internet service can be presumed to be ancillary, consistent with the existing rules and without creating an undue risk of waste, fraud, and abuse of limited E-Rate funds. In turn, the Commission expects it will also simplify the application process for some applicants.

18. In specific regard to Tribal libraries, if the Tribal library is selecting the most cost-effective means of receiving the eligible service without regard to the value of the ineligible components, the burden to allocate a portion of the cost for any ineligible use may decrease participation by these small entities. So, with this presumption, the Commission expects the occasional office use, such as described by the Alaska Department of Education and Early Education and Alaska State Library, could be considered ancillary and cost allocation would not be required, as long as 90% of the requested internet service is used for the library's eligible purposes. The Commission declines to fully remove cost allocation requirements for all Tribal libraries housed in a multipurpose building because of concerns that the exception could lead to the E-Rate program funding largely ineligible services—for instance, if a

large administrative building has a small Tribal library located within one room in the building—but the Commission seeks additional comment on this issue in the companion *FNPRM*.

19. Next, the Commission addresses concerns raised by the Joint Commenters and clarifies that expenses associated with cabling that is primarily being used to provide broadband connectivity within schools and libraries need not be cost allocated, provided it is the most cost-effective means of receiving the eligible service. The Joint Commenters note that applicants have periodically experienced difficulties receiving E-Rate support for cabling, or have been required to return funding based on what equipment the cabling was connected to after installation. They further explain that these issues typically arise in the context of installing internal cabling throughout a building that “provide data transmission to specific points located in the ceilings or in walls of a school or library building, thus creating a ‘drop’ or ‘jack’ for various types of equipment to connect to, and then gain access to the communications network.” Cabling is conditionally eligible for E-Rate support, which means that it is ineligible for E-Rate funding when it is for an ineligible use, such as for a security camera network or voice network, and the costs must be allocated or removed from the funding requests. However, the Commission agrees that it is unworkable to determine conditional eligibility of the cabling on a drop-by-drop basis, particularly after the fact, depending on what broadband-enabled device is plugged into the local area network cabling. Many devices may be connected to a school or library's local area network, both wired and wirelessly, and the devices connected to a network may change over time. The Commission therefore finds that the eligibility determination should be based on the purposes of the network as a whole, rather than for each cabling “drop” or “jack”. As such, cabling “drops” or “jacks” that are part of a local area network primarily serving an eligible purpose (*i.e.*, distributing broadband throughout a school or library building) are eligible for E-Rate and do not require cost allocation. The Commission anticipates that this will help applicants by providing them certainty to request category two funding for the cabling needed for their Wi-Fi networks without concern that in the future an auditor will seek recovery of a small portion of that E-Rate funding due to a broadband-enabled device,

such as a security camera, being attached at a later date. At the same time, the Commission expects applicants' category two budgets will constrain them from requesting more cabling drops than necessary for their local area networks. Regardless of this clarification, the Commission reminds applicants that cabling is ineligible to the extent it is installed specifically for a security camera network or for a dedicated voice network.

20. Finally, the Commission addresses an issue with the cost allocation required for shared equipment that is located at a non-instructional facility, including library administrative buildings. While NIFs are eligible for category one support, category two support is generally not available for NIFs unless the equipment is “essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose.” This is generally a district switch located in an administrative building or data center. Under the current rules, a school district or library system generally cannot use any of its budget for category two equipment for a NIF. The exception for essential, shared equipment still applies, and therefore, applicants can purchase this type of equipment to be located in a NIF, but the rules now explicitly state that the applicant must remove the costs associated with the NIF's use of the shared equipment. As a result, the Commission has since learned that applicants have been required to undergo complicated cost-allocation calculations that have proven to be administratively burdensome, resulting in the removal of a small fraction of the funding request for the needed equipment, undercutting the Commission's efforts to streamline the category two application process. As long as the applicant is choosing the most cost-effective offering for the shared equipment (*e.g.*, a district switch) without regard for the NIF's use, the Commission agrees that the applicant should not be required to cost allocate the NIF's use of the shared equipment. In recognition of this, the Commission now amends the rules to no longer require cost allocation to remove the costs associated with the NIFs' use of the shared equipment in NIFs and related-library administrative buildings. Removing these requirements will permit applicants to forego these complex cost-allocation procedures as they seek to equip their schools and

libraries with the category two equipment they need to serve their students and library patrons.

21. The Commission recognizes that there still exist potential cost-allocation challenges for those Tribal libraries that share space with other governmental and/or community organizations or services, often in unique configurations. The Commission therefore directs USAC to publicly post plain language guidance, approved by the Wireline Competition Bureau (Bureau), providing examples of Tribal library cost allocations as they may arise. This could help other Tribal library applicants understand whether they need to cost allocate in their particular situation and provide examples on how they should cost allocate, if required. The Commission also seeks comment in the *FNPRM* if there are additional cost-allocation examples that would benefit from further Commission guidance.

22. To further strengthen the Commission's government-to-government relationship with Tribal Nations and to improve communication with Tribal communities to better support Tribal entities applying for and receiving E-Rate funding, the Commission also makes a number of changes to the rules and processes. First, the Commission establishes a formal definition of Tribal within the E-Rate program to better identify those Tribal applicants seeking E-Rate funding. Second, the Commission amends the rules to add a Tribal representative to the USAC Board of Directors who will represent the Tribal community and provide valuable insights for the administration of the USF and the universal service programs. Lastly, the Commission directs USAC to provide greater outreach to Tribal applicants, and all applicants, so as to create a smoother application process. Taken together, the Commission expects these actions will strengthen the government-to-government relationship between the Commission and Tribal Nations, to better support Tribal libraries and schools, and the communities that they serve.

23. *Tribal Definition.* To ensure that Tribal entities can be identified as Tribal when applying for E-Rate support and that Tribal libraries can receive the increase in category two funding, the Commission adopts and add the definition for "Tribal" in § 54.500 of the Commission's E-Rate rules.

24. This definition of Tribal is modified slightly as compared to the definition proposed in the *Tribal E-Rate NPRM* as a result of the record the Commission received. The Commission chose not to include those entities for

whom "the majority of students or library patrons served are Tribal members" as being Tribal because, as one commenter noted, this approach would be difficult to demonstrate and administer. Additionally, after discussion with Tribal representatives during the May 19, 2023 Tribal Consultation and Listening Session the Commission determined that both that portion of the definition and the Tribal lands portion of the definition proposed in the *Tribal E-Rate NPRM* were adequately covered by the remaining portion of the proposed definition. The Commission also included the "Alaska native village, regional corporation, or village corporation" language based upon suggestions from the May 19 Tribal Consultation and Listening Session, incorporating language from the definition of Tribal used by the Institute of Museum and Library Services (IMLS). The Alaska Department of Education and Early Development and the Alaska State Library in their joint comments supported this approach. While one commenter suggested maintaining the present system whereby applicants self-identify as Tribal, the category two rule changes require implementation of a definition for Tribal applicants to evaluate their eligibility for the enhanced benefits. In addition, to better track and more easily identify Tribal entities and their Tribal affiliation, the Commission will also collect the applicant's Tribal affiliation as part of the application process.

25. *USAC Board of Directors.* Next, the Commission adopts the proposal to add a new director to the USAC Board of Directors to represent the interests of Tribal communities. Consistent with the existing rules governing the USAC Board, the Commission establishes a new seat on the Board and require Tribal entities to nominate a person to this seat to represent the interests of Tribal communities. This idea was first suggested by ALA and the Association of Tribal Archives, Libraries, and Museums (ATALM) in their joint comments to the *2021 Tribal Libraries NPRM*, 86 FR 57097, October 14, 2021, wherein they explained how such a position could simultaneously provide USAC with information from the Tribal community and provide the Tribal community with information directly from USAC. Commenters that addressed the addition of a Tribal director unanimously supported the proposal. Participants at the April 13, 2023 Tribal Consultation and Listening Session were also supportive of this proposal, noting that USAC's Board would benefit from having a Tribal perspective that

could speak to the unique political and geographical identity of Tribal communities, a sentiment reiterated by Chief Executive Melanie Benjamin in reply comments filed by the Mille Lacs Band of Ojibwe. Adding a Tribal director to the Board allows USAC, the USF, and all the universal service programs USAC administers to benefit from the perspective that a Tribal representative will provide.

26. The Commission's existing rules with regards to directors will also apply to the Tribal director. The Tribal community shall nominate by consensus a new director. If consensus on a nominee is not reached or a nominee is not provided, the Chair of the Commission shall select an individual to be the Tribal director. The Tribal director will also serve a three-year term but will be eligible to serve for subsequent terms. In addition, the Commission adds the Tribal director to the Schools and Libraries Committee so that the Tribal board member can participate in and assist the Committee in carrying out its responsibilities and duties regarding the E-Rate program. As with other Board member positions, the Tribal director may also serve on other USAC Board committees as well. Since there will now be an even number of directors on the USAC Board, the Commission directs USAC to make any necessary changes to its bylaws to ensure procedures are in place to determine an outcome in the case of a tie.

27. *Outreach and Training.* The Commission seeks to aid Tribal library applicants by directing USAC to provide additional training and outreach throughout the application, invoicing and post-commitment processes. The Tribal Libraries E-Rate Pilot Program the Commission tested last year demonstrated the value of one-to-one and cohort assistance, tailored to the needs of new Tribal library applicants. The Commission received positive feedback from participants and commenters alike, who have requested ongoing support to navigate the technical and administrative processes. The Pilot Program also provided helpful lessons learned for both USAC and the Commission to enhance future E-Rate Tribal related trainings. The Commission therefore directs USAC to establish an enhanced training program that includes both cohort and on-demand learning opportunities that are targeted to Tribal E-Rate applicants. Where possible, the Commission encourages USAC to conduct hands-on, in-person training opportunities, as suggested by ALA. Enhancing Tribal governments' and libraries' awareness of

the E-Rate program, as well as program requirements, is integral to the other changes adopted herein. The Commission also directs USAC to provide specific support for TCU libraries, which will be eligible for the E-Rate program for the first time. The Commission encourages USAC to identify any TCU library applicants and provide them with additional resources to assist them in the setting up their entity profiles in the E-Rate Productivity Center (EPC) and through the application and reimbursement processes.

28. In addition to enhanced training, commenters identified other outreach opportunities to better support Tribal library applicants. Specifically, as suggested by ALA in their initial comments, the Commission directs USAC to identify and conduct outreach to first-time Tribal applicants (may also be known as billed entities or BENs) to provide additional information concerning the review process and to inquire as to any questions the first-time filer or applicants may have. Commenters also expressed confusion related to how a library, including a Tribal library, should set up their billed entity when the respective local government is the entity that pays the bill to vendors. Consistent with the comments from the Alaska Department of Education and Early Development and the Alaska State Library, the Commission directs USAC to post guidance on its website for first-time Tribal library applicants on how to properly set up a library in EPC when the Tribal government, rather than the library, is the entity responsible for paying bills and invoices. The Commission also directs USAC to publish library-specific guidance, upon approval from the Bureau, on issues libraries commonly experience while navigating the E-Rate program.

29. The Commission declines to adopt an extended or separate application filing window for Tribal libraries, as that could cause confusion, but directs the Bureau to continue considering requests for waiver of the FCC Form 471 application filing deadline, recognizing the special circumstances that Tribal library applicants face when applying for the E-Rate program. From speaking with Tribal governments and libraries, the Commission recognizes that the procurement processes for Tribal libraries can be on different timelines from the procurement processes for Tribal schools, that there are fewer staff to handle such filings, and that it can be time-consuming to get approvals for procurements from Tribal officials. However, commenters suggested that

extending the filing window or creating a wholly separate filing window would not be helpful at this time and that waiver requests are a better way to assist Tribal libraries in applying for E-Rate support. Therefore, recognizing that the E-Rate process may be particularly challenging for small entities like Tribal libraries, the Commission urges such entities to file timely waiver requests of the FCC Form 471 application filing deadline and to describe in such requests relevant special circumstances, such as delays from additional Tribal approvals. The Commission expects the Bureau to adjudicate any such requests quickly. In this way, the Commission maintains useful program deadlines while also providing assistance to Tribal library applicants.

30. Finally, as suggested by commenters, the Commission directs USAC to develop a mechanism to remind all registered users in EPC three weeks prior to the invoice filing deadline for each funding request (FRN) where no requests for reimbursement have been submitted yet, with instructions on how to file for reimbursement and how to file for a 120-day invoice filing deadline extension. This reminder will offer applicants and service providers an opportunity to avoid missing the invoice filing deadline and to avoid imperiling their ability to receive reimbursement for their E-Rate funding requests. While the Commission hopes that this reminder will assist applicants and service providers that may have overlooked the invoice filing deadline, applicants and service providers are cautioned that it is their responsibility to comply with the Commission's invoice filing deadline rule, regardless of whether or not USAC has sent a reminder of the deadline. The Commission expects this direction to USAC will benefit all E-Rate applicants, especially Tribal library applicants who may be new to the E-Rate reimbursement process.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

31. The document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the

Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

B. Congressional Review Act

32. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Act

33. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Tribal E-Rate NPRM*. The Commission sought written public comment on the proposals in the *Tribal E-Rate NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

34. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, internet access, and internal connections.

35. Taking steps to close the digital divide is a top priority for the Commission. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides vital support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In this document, the Commission enhances Tribal access to E-Rate funding by making both Tribal library specific rule changes and program wide changes that will help all

applicants, including Tribal libraries. The Commission modifies its rules to allow TCU libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community. The Commission simplifies the program by eliminating competitive bidding requirements for Tribal libraries seeking funding for \$3,600 total or less of category two funding, increasing the category two maximum discount rate from 85% to 90%, and increasing the category two funding floor from \$25,000 to \$55,000 for Tribal libraries. The Commission also provides guidance related to cost allocation by establishing a presumption that if at least 90% of an applicant's internet usage is for an eligible use the remaining ineligible portion is presumed to be ancillary and, therefore, does not need to be cost allocated. The Commission clarifies that cabling that is a part of a local area network is eligible for funding and does not need to be cost allocated. The Commission also modifies its rules to no longer require applicants to cost allocate the costs associated with a non-instructional facility's (NIF) use of shared equipment in NIFs and related library administrative buildings. The Commission directs USAC to increase training and outreach to Tribal libraries and to provide additional support to applicants and registered users of the E-Rate Productivity Center. Lastly, the Commission amends its rules to adopt a definition for "Tribal" and modifies its rules to add an additional Director to the USAC Board to represent Tribal communities.

36. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

37. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

38. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

39. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small

business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

40. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

41. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

42. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of "small governmental jurisdictions."

43. Small entities potentially affected by the rules herein are Schools, libraries, Wired Telecommunications

Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Telephony, Wired Broadband internet Access Service Providers (Wired ISPs), Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs), internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, Radio and Television Broadcasting, and Wireless Communications Equipment Manufacturing.

44. The purpose of this document is to streamline and simplify procedures, and improve the E-Rate program processes. As such, the Commission's rule modifications will reduce the economic impact of current compliance obligations on small entities. For example, TCU libraries will not have to perform cost-allocation calculations of the college student usage at the library versus public usage of bandwidth, reducing compliance obligations. The changes the Commission makes will also reduce current compliance obligations by exempting certain small entity library applicants seeking E-Rate support for category two equipment or services of \$3,600 or less in a single funding year from the competitive bidding process.

45. New procedures direct USAC to provide specific support for TCU libraries, outreach to first-time applicants, and invoice reminders for funding requests, which will ease operations and implementation costs for applicants and participants that are small entities. Additionally, the Wireline Competition Bureau will continue to provide leniency to Tribal library applicants that file waiver requests of the FCC Form 471 application filing deadline, easing the compliance burden for these small entities. The Commission is requesting additional information for Tribal affiliation as part of the application process, and this information request is simple enough that it will not increase the burden of applying for relevant applicants that are small entities. Small entities will not be required to hire professionals to comply with any rule modifications. Although the Commission cannot quantify the cost of compliance for small entities, the Commission anticipates the approaches it has taken in this document to streamline and simplify procedures, and improve the E-Rate program processes will have minimal or *de minimis* cost implications and should significantly reduce compliance requirements for

small entities that may have smaller staff and fewer resources.

46. The RFA requires an agency to provide, “a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.”

47. In this document, the Commission takes steps to minimize the economic impact on small entities with the rule changes that it has adopted. The Commission made rule changes that will lower the burden for applicants to the E-Rate program. By granting Tribal libraries an exemption from the competitive bidding process for category two purchases totaling under \$3,600, the Commission greatly simplifies the process of receiving funding for these small purchases, making it easier for Tribal libraries with a small staff to apply for E-Rate. The Commission also made changes to category two funding for Tribal libraries, increasing the maximum discount they can be eligible for from 85% to 90%, and increasing the minimum funding budget, increasing the funding floor from \$25,000 to \$55,000 for Tribal libraries. This will reduce the share that they must pay for Wi-Fi networks, increase the amount of support that is eligible for reimbursement, and allow small libraries to have greater access to funding at a lower cost to themselves.

48. The Commission also clarifies its cost allocation rules to limit the burden on all applicants, including small entities, adopting a presumption that if at least 90% of an applicant’s requested internet service is being used for eligible purposes, the remaining ineligible portion is presumed to be ancillary and, therefore, cost allocation is not required. The Commission considered but rejected alternatives for removing cost allocation requirements for Tribal libraries in multipurpose rooms because of concerns that this would lead to funding ineligible services. Finally, the Commission has directed USAC to provide enhanced support to all applicants, with particular attention being paid to small entities such as small libraries who work with their small, local governments to secure funding.

49. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the

Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

50. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, this Report and Order *is adopted* effective September 14, 2023.

51. *It is further ordered*, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, Part 54 of the Commission’s rules, 47 CFR part 54, *is amended*, and such rule amendments shall be effective September 14, 2023, except for §§ 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

52. *It is further ordered*, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, that the Petition for Reconsideration filed by the State E-Rate Coordinators’ Alliance on January 21, 2020, *is dismissed*.

53. *It is further ordered* that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

54. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Section 54.500 is amended by adding, in alphabetical order the definition of “Tribal” to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Tribal. An entity is “Tribal” for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

■ 3. Section 54.501 is amended by revising paragraph (b)(2) and adding paragraph (b)(4) to read as follows:

§ 54.501 Eligible recipients.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a library’s eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

* * * * *

(4) A Tribal college or university library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

* * * * *

■ 4. Section 54.502 is amended by revising paragraphs (d)(4) and (6) to read as follows:

§ 54.502 Eligible Services.

* * * * *

(d) * * *

(4) *Funding floor.* Each eligible school and library shall be eligible for support for category two services of at least a

pre-discount price of \$25,000 over five funding years. Tribal libraries shall be eligible for support for category two services of at least a pre-discount price of \$55,000 over five funding years.

* * * * *

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

* * * * *

■ 5. Section 54.503 is amended by revising paragraph (e) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(e) *Exemption to competitive bidding requirements.* (1) An applicant that seeks support for commercially available high-speed internet access services for a pre-discount price of \$3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A library applicant that seeks support for category two services for a total pre-discount price of \$3,600 or less per library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section. Applicants must select a cost-effective service offering, based on the price of the equipment or services.

■ 6. Delayed indefinitely, amend § 54.503 by revising paragraphs (c)(2)(i)(B).

§ 54.503 Competitive bidding requirements.

* * * * *

- (c) * * *
- (2) * * *
- (i) * * *

(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal colleges or universities, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

* * * * *

■ 7. Delayed indefinitely, section 54.504 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 54.504 Requests for services.

- (a) * * *
- (1) * * *

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or universities, their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

* * * * *

■ 8. Section 54.505 is amended by revising paragraph (c) introductory text and adding paragraph (g) to read as follows:

§ 54.505 Discounts.

* * * * *

(c) *Matrices.* Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

* * * * *

(g) *Tribal Library Category Two Discount Level.* For the costs of category two services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

■ 9. Section 54.701 is amended by revising paragraph (b) to read as follows:

§ 54.701 The Administrator of universal service support mechanisms.

* * * * *

(b)(1) The Administrator shall establish a twenty (20) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705:

(i) The Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism;

(ii) The Rural Health Care Committee, which shall oversee the rural health care support mechanism; and

(iii) The High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism.

(2) The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

* * * * *

■ 10. Section 54.703 is amended by revising paragraph (b) introductory text and paragraph (b)(12), redesignating paragraph (b)(13) as paragraph (b)(14), and adding a new paragraph (b)(13) to read as follows:

§ 54.703 The Administrator's Board of Directors.

* * * * *

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of twenty (20) directors:

* * * * *

(12) One director shall represent state consumer advocates;

(13) One director shall represent Tribal communities; and

* * * * *

■ 11. Section 54.705 is amended by redesignating paragraphs (a)(2)(iv) and (v) as paragraphs (a)(2)(v) and (vi), and adding a new paragraph (a)(2)(iv) to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) * * *

(2) * * *

(iv) One Tribal community representative;

* * * * *

[FR Doc. 2023–16984 Filed 8–14–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No. 230804–0184]****RIN 0648–BM09****Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2023**

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

ACTION: Final rule.

SUMMARY: NMFS announces Federal management measures for the 2023 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year. The intent of this action is to set management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest targets and thereby prevent overfishing of the summer flounder, scup, and black sea bass stocks.

DATES: This rule is effective August 15, 2023.

ADDRESSES: Copies of this final rule and the small entity compliance guide prepared for permit holders are available from: Michael Pentony, Regional Administrator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01938 and accessible via the internet at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/commercial-fishing/northeast-groundfish-monitoring-program>.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Policy Analyst, (978) 281–9145, or Mark.Grant@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Mid-Atlantic Fishery Management Council and the Atlantic

States Marine Fisheries Commission cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission's Management Boards meet jointly each year to recommend recreational management measures. This is the first time a new approach for developing recreational summer flounder, scup, and black sea bass recreational management measures is being used. The new process, referred to as the Percent Change Approach, was part of Framework Adjustment 17 to the Summer Flounder and Black Sea Bass Fishery Management Plan (FMP) and Framework Adjustment 6 to the Bluefish FMP (March 9, 2023, 88 FR 14499). The Percent Change Approach is a harvest control rule designed by the Council and Commission for use in managing mid-Atlantic recreational fisheries and uses two factors to determine if management measures could remain status quo, could be liberalized, or must be restricted. These two factors are: (1) A comparison of a confidence interval (CI) around an estimate of expected harvest under status quo measures to the average recreational harvest limit (RHL) for the upcoming 2 years; and (2) biomass compared to the target level, as defined by the most recent stock assessment. These two factors also determine the appropriate degree of change, defined as a percentage change in expected harvest. Changes to recreational management measures to achieve the required percent change are evaluated by the Monitoring Committee consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP limits the choices for the types of measures to: Minimum and/or maximum fish size; per angler possession limit; and fishing season. A description of the application of this process for each species is provided below.

In this final rule, NMFS is implementing conservation equivalency to manage the 2023 summer flounder and black sea bass recreational fisheries, as proposed on March 30, 2023 (88 FR 19046). Under conservation equivalency, Federal recreational measures are waived and federally

permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. This approach allows for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area, compared to coastwide measures that may be advantageous to anglers in some areas and unnecessarily restrictive in others. The combination of state or regional measures must be "equivalent" in terms of conservation to a set of "non-preferred coastwide measures," which are recommended by the Council and the Board each year. States, through the Commission, are collectively implementing measures designed to constrain landings to the 2023 harvest targets. Vessels fishing in Federal waters and Federal party/charter vessels are subject to the regulations in the state in which they land. These measures are consistent with the recommendations of the Council and the Commission. Additional information on the development of these measures is provided in the proposed rule (88 FR 19046, March 30, 2023) and not repeated here.

For scup, we are implementing a 40-fish possession limit, and an open season of May 1 through December 31. These measures are consistent with the December 2022 recommendation of the Council and Commission's Summer Flounder, Scup, and Black Sea Bass Board. However, at the March 2, 2023, meeting of only the Board, the Board requested that we reconsider the January 1 through April 30 Federal scup closure. Our rationale (which incorporates our reconsideration) for implementing the closure is explained in more detail below.

Scup Recreational Management Measures

Application of the Percent Change Approach and the bio-economic model used to evaluate recreational behavior and catch resulted in a recommended 10-percent reduction in scup harvest in 2023.

TABLE 1—ESTIMATED 2023 SCUP HARVEST, ASSOCIATED CI, 2023 RHL, STOCK SIZE CATEGORY, AND RESULTING PERCENT CHANGE RECOMMENDED FOR 2023

Estimated harvest under Status quo measures	80-percent CI	2023 RHL	Stock size category	Recommended percent change
14.31 million lb (6,490 mt)	11.55–16.26 million lb ¹ (5,216–7,375 mt).	9.27 million lb (4,204 mt)	Very High	10-Percent Reduction.

¹ In the proposed rule, the incorrect CI of 9.90–17.40 million lb (4,490–7,892 mt) was presented. This CI is the correct value range. It does not change the conclusions.

The previously implemented Federal recreational scup management measures were a 10-inch (25.4-cm) minimum fish size, a 50-fish per person possession limit, and a year-round open season.

The measures being implemented in state waters collectively achieve a reduction of approximately 9.5 percent. The exact contribution (in terms of the percent reduction) of the Federal actions cannot be accurately quantified, but they will contribute to the overall reduction, and we expect the required 10-percent reduction will be achieved by the combined Federal actions and state waters measures.

Given the timing of the management process, Federal and state waters measures are not possible to implement at the start of the fishing year (January 1), and often are not effective until spring (May/June). However, the analyses used to determine the needed management changes often assume that changes can and will be made throughout the fishing year. Given the timing of this final rule, the Federal scup closure from January through April will not be effective until 2024. If, during the course of the fishing year, data indicate that the closure is not necessary, there are opportunities for the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Board to recommend action prior to January 1, to reopen all or some of the closure. At this time, we cannot determine that it would be appropriate to eliminate the closure. Additionally, the States of Massachusetts, Rhode Island, Connecticut, and New Jersey, where more than 99 percent of all recreationally harvested scup are landed, have all selected State waters measures that include a closure during January through April to help achieve the required reduction. These State waters closures will remain in place in 2024, and having Federal waters closed during the same period next year will promote compliance and enforcement with the States' measures.

We are implementing a Federal recreational scup possession limit of 40

fish per person, and an open season from May 1 through December 31. No changes to the Federal minimum size are being made. The Federal measures, in conjunction with changes to state waters measures, are expected to achieve the needed 10-percent harvest reduction.

Summer Flounder Recreational Management Measures

On April 20, 2023, the Commission notified NMFS that it has certified that the 2023 recreational fishing measures required to be implemented in state waters for summer flounder are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in 50 CFR 648.104(b), 648.105, and 648.106(a). According to § 648.107(a)(1), vessels subject to the recreational fishing measures are not subject to Federal measures and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) is amended through this final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2023.

In addition, this action revises the default 'non-preferred' summer flounder coastwide measures at §§ 648.104(b), 648.105, and 648.106(a). For 2023, the non-preferred coastwide measures are an 18-inch (45.72-cm) minimum fish size; a 3-fish per person possession limit; and an open season from May 15 through September 22. Compared to 2022, this is a decrease in the non-preferred minimum size from 18.5 inches to 18 inches (45.72 cm to 48.26 cm) total length; a 1-fish reduction of the possession limit; and an increase in the season length. The non-preferred coastwide measures become the default management measures in the subsequent fishing year, in this case 2024, until the joint process establishes either non-preferred coastwide measures or conservation-equivalency measures for the next year.

Black Sea Bass Recreational Management Measures

On April 20, 2023, the Commission notified NMFS that it has certified that the 2023 recreational fishing measures required to be implemented in state waters for black sea bass are, collectively, the conservation equivalent of the season, fish size, and possession limit prescribed in §§ 648.145(a), 648.146, and 648.147(b). According to § 648.142(d)(2), vessels subject to the recreational fishing measures are not subject to Federal measures and instead are subject to the recreational fishing measures implemented by the state in which they land. Section 648.151 is amended through this final rule to recognize state-implemented measures as the conservation equivalent of the Federal coastwide recreational management measures for 2023.

In addition, this action revises the default 'non-preferred' black sea bass coastwide measures. For 2023, the non-preferred coastwide measures are: A 15-inch (12.7-cm) minimum size; a 5-fish possession limit; and an open season of May 15 through September 8. Compared to 2022, this is a 1-inch (2.54-cm) increase to the minimum size and a 1-month reduction to the season length. The non-preferred coastwide measures become the default management measures in the subsequent fishing year, in this case 2024, until the joint process establishes either non-preferred coastwide measures or conservation-equivalency measures for the next year.

Changes From the Proposed Rule

There are no changes to the proposed rule, but there are corrections to two tables that appeared in the proposed rule. As noted above, the estimated scup harvest's CI values in Table 1 have been corrected. In the proposed rule, the incorrect CI was presented. In this rule, the correct CI is included in Table 1.

Further, in the proposed rule, Table 3 contained the incorrect black sea bass RHL value. The following table, Table 2, contains the correct RHL.

TABLE 2—ESTIMATED 2023 BLACK SEA BASS HARVEST, ASSOCIATED CI, 2023 RHL, STOCK SIZE CATEGORY, AND RESULTING PERCENT CHANGE RECOMMENDED FOR 2023

Estimated harvest under status quo measures	80-percent CI	2023 RHL	Stock size category	Recommended percent change
7.93 million lb (3,597 mt)	7.17–8.63 million lb (3,252–3,915 mt).	6.57 million lb ² (2,981 mt)	Very High	10-Percent Reduction.

²In the proposed rule, an incorrect RHL of 6.74 million lb (3,057 mt) was listed. This RHL is the correct value. It does not change the conclusions.

The errors existed only in the proposed rule tables and did not affect the determination of recreational measures.

Comments and Responses

We received 14 unique comment letters in response to the proposed rule (88 FR 19046, March 30, 2023). Comments are grouped and summarized by topic. One of these comments was not relevant to the proposed rule and is not discussed further. Many comments focused in whole or in part on state measures or on the allocation between the commercial and recreational fisheries, neither of which were part of the proposed action and, therefore, are not addressed in the following responses.

General Comments on the 2023 Recreational Measures

Comment 1: The Massachusetts Division of Marine Fisheries (MADMF) generally supported approval of the proposed measures and focused on the need for, and benefits of, the proposed Federal recreational scup measures. Three commenters generally opposed approval of the proposed 2023 recreational measures. Specifically, one individual opposed conservation equivalency because it is based on the overall weight of catch and not fish lengths. A party/charter fishing advocate opposed closed seasons and cited negative economic effects. The Natural Resources Defense Council (NRDC) opposed the proposed measures because they are based on the new process (known as the Percent Change Approach) for setting recreational measures (*i.e.*, bag, size, and season limits) implemented by Framework Adjustment 17 (88 FR 14499, March 9, 2023). In particular, NRDC argued the recreational measures for 2023 would allow recreational catch to exceed the recreational annual catch limits (ACL) in violation of National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

Response: The Council and the Commission cooperatively manage summer flounder, scup, and black sea

bass. The Council and the Commission's Management Boards meet jointly each year to recommend recreational management measures. For summer flounder and black sea bass, we must implement 'non-preferred' coastwide measures or approve state-developed conservation-equivalent measures per §§ 648.102(d) and 648.142(d), as soon as possible following the recommendation from the Council and Commission. On April 20, 2023, the Commission formally notified us of its determination that the states have implemented, or are in the process of implementing conservation-equivalent state measures that should be approved for 2023. In accordance with §§ 648.107(a)(1) and 648.142(d)(2), in this final rule we are approving and implementing conservation equivalency for both species for 2023. For scup, we are implementing adjustments to the Federal recreational season and possession limit for 2023 as proposed. We respond in detail to specific comments on the measures below.

Comment 2: A party/charter fishing advocate commented that the 2023 recreational measures for summer flounder, scup, and black sea bass create a disparate and negative economic effect to the party/charter industry in the mid-Atlantic and southern New England. The commenter argued that the economic cost for an angler to go fishing is high, continues to rise, and is not considered by the Council in the specification-setting process. This commenter also stated that the rising cost penalizes the party/charter sector and any angler who is specifically targeting black sea bass for food rather than targeting striped bass as a sportfish. The Stellwagen Bank Charter Boat Association (SBCBA) recommended that the party/charter fleet have separate seasons and possession limits from private recreational anglers because the fleet needs to operate a financially viable business while providing access to the fishery for the public.

Response: The 2023 recreational measures were developed and analyzed using the new Recreational Demand Model (RDM). The RDM explicitly models the relationship between policy-

or stock-induced changes in trip outcomes and angler behavior. There are three main components of the RDM: An angler behavioral model; a calibration sub-model; and a projection sub-model. The angler behavioral model uses choice experiment survey data (angler survey responses on possible recreational measures) to estimate angler preferences for harvesting and discarding summer flounder, scup, and black sea bass. The projection sub-model computes expected effects on angler effort, angler welfare, the local economy, and recreational fishing mortality. Using the model, the Council and Commission considered 225 options for scup, summer flounder, and black sea bass measures to achieve the recreational harvest targets determined by the application of the Percent Change Approach.

In addition to the overall socioeconomic effects included in the RDM, the Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures as part of the Regulatory Impact Review (RIR) and Regulatory Flexibility Analysis (RFA) (see ADDRESSES). The RFA evaluated not only the preferred measures, but also non-preferred alternatives, and examined the economic effects to federally permitted party/charter vessels. It is not possible to accurately quantify the economic impact of measures on party/charter vessels, but all the affected party/charter businesses were determined to be small businesses. The restrictions for scup and black sea bass to achieve a 10-percent reduction in harvest could result in a decrease in for-hire trips, decreased for-hire revenues, and overall slight negative impacts to the recreational for-hire businesses. No impacts to for-hire businesses are expected from state/regional summer flounder measures because they are expected to remain unchanged.

Comment 3: The SBCBA commented that the proposed 10-percent recreational harvest reduction for scup and black sea bass is inconsistent with its observations of biomass of both species in Massachusetts' waters.

Further, it stated that the ongoing and continued reductions in seasons and bag limits at a time when its observations of black sea bass and scup biomass have significantly increased has the public frustrated and losing confidence in the fishery management process.

Response: We agree the biomass of scup and black sea bass are currently very high. Each species' biomass is more than 150 percent of the target level. However, the Percent Change Approach evaluates not only the current biomass in relation to the target biomass, but also evaluates the projected harvest under status quo measures against the RHL.

Application of the Percent Change Approach and the RDM resulted in a recommended 10-percent reduction in scup harvest in 2023. This is because even though scup has a very high biomass (more than 150 percent of the target level), harvest under status quo measures is expected to be above the 2023 RHL. The Federal scup measures implemented by this rule, in conjunction with changes to state waters measures, are projected to achieve the needed 10-percent harvest reduction.

Additionally, this rule does not implement state-specific measures for black sea bass and summer flounder, but waives the Federal recreational measures for both species. Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all private recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. States and regions set their own management measures, which are approved through the Commission process.

Comments on the National Standards

Comment 4: NRDC argued the recreational measures for 2023 would allow recreational catch to exceed the recreational ACLs in violation of National Standard 1. Specifically, NRDC alleged the proposed recreational measures, and the Percent Change Approach in general, would not constrain recreational catch to the recreational ACLs. It further argued that any recreational ACL overage would risk exceeding the acceptable biological catch (ABC) or overfishing limit (OFL) because the available catch for each stock is allocated fully between the commercial and recreational sectors.

Response: National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The

National Standard guidelines clarify that this means producing an amount of catch that is, on average, equal to the Council's specified optimal yield; prevents overfishing; maintains the long-term average biomass near or above the target biomass; and rebuilds overfished stocks and stock complexes.

The Percent Change Approach has been established by the rulemaking implementing Frameworks 17 and 6 and, as such, must be followed in setting the recreational management measures in this action. Deviating from this approach would require new rulemaking to modify Frameworks 17 and 6, which is beyond the scope of this action. However, as explained in detail in the final rule implementing Framework 17, the new Percent Change Approach is a harvest control rule designed by the Council and Commission for use in managing mid-Atlantic recreational fisheries and uses two factors to determine if management measures could remain status quo, could be liberalized, or must be restricted. These two factors are: (1) a comparison of the CI around an estimate of expected harvest under status quo measures to the average RHL for the upcoming 2 years and; (2) biomass compared to the target level, as defined by the most recent stock assessment. These two factors also determine the appropriate degree of change, defined as a percentage change in expected harvest.

The Percent Change Approach does not change the process for setting measurable and objective status determination criteria (OFL, ABC, ACL) as required by National Standard 1. The status determination criteria continue to be based on the best available scientific information as determined by the Council's Scientific and Statistical Committee. The Percent Change Approach does not eliminate the recreational ACL or RHL, and continues to use both in the process of setting measures and evaluating accountability measures (AM). Together, these measures meet the requirements of National Standard 1. The Percent Change Approach is a method for determining the need for, and extent of, recreational fishing measures to prevent overfishing while allowing catch to target optimal yield. This new approach attempts to constrain harvest in order to prevent overfishing while also acknowledging that recreational catch estimates are uncertain and often highly variable (more so than commercial catch estimates). The Percent Change Approach makes incremental adjustments, thus reducing the tendency of management measures to chase after

the highs and lows by either liberalizing or restricting measures too much in any given year in reaction to potentially large swings in recreational catch estimates.

The approach also builds in more precaution for stocks at lower biomass levels. Biomass levels and the target are taken directly from the approved and peer-reviewed stock assessments that occur every other year. Consider that when a stock biomass is in decline, it often becomes less available to the recreational fishery and, therefore, catch estimates may decline relative to the RHL. Formerly, management measures would be liberalized, sometimes significantly, while catch fell due to a declining biomass, increasing fishing pressure on a declining stock. Conversely, as healthy stocks increase, sometimes far above the target biomass level, such as the current situations with black sea bass and scup, the fish become more available to the fishery, even under restrictive measures, resulting in catch estimates that exceed the RHL. However, what appear to be overages have, in these circumstances, been found to have no negative biological impact on abundant stocks, as when we continue to see increases in biomass in a subsequent stock assessment. Therefore, not all overages result in overfishing. For example, black sea bass has not been subject to overfishing in over 10 years despite sustained high recreational catch levels that sometimes exceeded the RHL and the recreational ACL.

Prior to implementing the Percent Change Approach, the method used to determine recreational measures used the same criteria (RHL and estimated catch), but did not consider or incorporate stock biomass in determining the extent of changes (whether more liberal or more conservative). The old method prescribed the same degree of changes to management measures whether a stock biomass was considered overfished (less than 50 percent of its maximum sustainable yield target) or over 200 percent of its target level. The Percent Change Approach also considers the estimated harvest compared to the RHL, but, in contrast to the previous approach, also incorporates information about stock status to determine whether, and how much, to either liberalize or restrict management measures. This ensures more conservative responses than the previous method for stocks in lower biomass conditions while allowing potentially more liberal responses only for stocks at very high biomass levels.

NRDC's comments focus on the Percent Change Approach for setting the management measures, but that is only one component of the management system. In addition to setting the status determination criteria, AMs remain a critical part of management. The AMs incorporate the explicit consideration of fishing mortality to determine if overfishing occurred, which has the effect of more accurately reflecting when more stringent adjustments to management measures are needed. Thus, the Percent Change Approach is consistent with the National Standard 1 requirement to use status determination criteria to determine overfishing status.

Comments on Summer Flounder Measures

Comment 5: NRDC commented that the 10.92-million lb (4,953 mt) summer flounder harvest target for 2023 is above the 10.62-million lb (4,817 mt) RHL specified for 2023 (88 FR 11, January 3, 2023), argued that including dead discards would exceed the 14.9-million lb (6,759 mt) recreational ACL, and alleged this violates the MSA.

Response: The Percent Change Approach does not eliminate the recreational ACL or RHL, and continues to use both in the process of setting measures and evaluating AMs. We expect summer flounder harvest under the status quo measures to be consistent with the RHL. As explained in detail below, application of the Percent Change Approach and the RDM generated conflicting results for summer flounder depending on the model parameters used. The 10.92-million lb (4,953 mt) summer flounder harvest target is only one of the estimated outcomes of the recreational measures, and is not statistically different from the 10.62-million lb (4,817 mt) RHL specified for 2023, as indicated by the 80-percent CI of 9.23–12.94 million lb (4,186–5,869 mt).

The intent of the Percent Change Approach is to iteratively adjust measures as necessary to prevent overfishing and more closely monitor the impact that recreational harvest has on a stock. The potential annual adjustments are constrained within a range of certain percentages in order to minimize the social and economic impact of the large adjustments that were sometimes implemented under the previous system and that were driven by large statistical fluctuations in the data used to estimate catch.

Recreational data are highly variable and uncertain due, in part, to the sampling protocols used to separately collect information about effort and catch data. Catch estimates, even under

consistent management measures, vary substantially from year to year. An effective system of managing the recreational fishery must acknowledge and address this variability and uncertainty. The past approach of reacting to large and uncertain swings in estimated harvest by correspondingly liberalizing or reducing those management controls in the subsequent year, in an attempt to achieve a specific harvest target, has been unsuccessful by all standards. The Percent Change Approach allows managers to consider additional scientific information beyond simply using an uncertain catch estimate when setting recreational measures to achieve optimum yield. Based on an evaluation of the current harvest levels compared to the upcoming RHLs and of the biomass relative to the target, the Percent Change Approach prescribes the degree of change necessary to be achieved by the recreational management measures. When a stock is at a lower biomass than the management target, such as the current situation for summer flounder, the management responses are more precautionary. This is because the conservation risk associated with overages is greater for stocks that are less abundant, whereas stocks that are well above their target biomass are more robust in the face of higher levels of fishing mortality. The overall goal of the Percent Change Approach is to iteratively adjust management measures to achieve the RHL, while minimizing potential overreaction (overcorrection) to annual variability in the harvest estimates.

As explained in detail in the proposed rule (88 FR 19046, March 30, 2023), this is the first time the Percent Change Approach was used for developing summer flounder, scup, and black sea bass recreational management measures. Application of the Percent Change Approach and the RDM generated conflicting results for summer flounder, depending on the initial assumptions used in the model configuration, specifically with regard to the years selected for Marine Recreational Information Program (MRIP) data used to project the amount of catch per trip. When the most recent complete year of MRIP data (2021) was used, the model-estimated summer flounder harvest under status quo measures was 8.38 million lb (3,801 mt), which is below the 2023 RHL. When an average of 2018–2022 MRIP data was used to determine the catch per trip, the model-estimated summer flounder harvest was 10.92 million lb (4,953 mt), which is slightly above the 2023 RHL. While

these estimates are not significantly different, because of the way the Percent Change Approach uses the estimates and CIs, the recommended management action resulting from each estimate was different. The model run using only 2021 data resulted in a recommended 10-percent liberalization, and the model run using the 2018–2022 average resulted in a recommended 10-percent reduction in summer flounder harvest. Given the conflicting results, and uncertainty about which model run was more likely to reflect 2023 harvest, the Council and Board made some adjustments to the non-preferred coastwide measures, but ultimately decided to maintain status quo measures at the state and regional levels. This rule adopts the Council's recommendation.

Comment 6: One member of the public, who opposed conservation equivalency because it is based on overall weight of catch and not fish lengths, commented that breeding summer flounder should not be targeted and argued there should be a possession limit of one 20-inch (50.8-cm) or larger fish per person per day. The individual further commented that mostly 16-inch (40.6-cm) to 19-inch (48.3-cm) summer flounder should be retained. A second member of the public commented that summer flounder recreational measures should be four fish with a minimum fish size of 16 inches (40.6 cm), with an open season from April 29 through October 10. This second individual also suggested we consider separate measures and seasons for inshore and offshore areas.

Response: This rule does not implement state-specific measures for summer flounder, but rather waives the Federal recreational measures for summer flounder. Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. States and regions set their own management measures, which are then approved through the Commission process.

The combination of state or regional measures must achieve equivalent conservation in lieu of the non-preferred coastwide measures, which are intended to maintain a status quo recreational harvest. The coastwide harvest target was calculated using the Percent Change Approach and the RDM. The non-preferred coastwide measures that are being waived include an 18-inch (45.7-cm) minimum size, a 3-fish bag limit, and an open season from May 15

through September 22. The precautionary default measures remain unchanged and include a 20-inch (50.8-cm) minimum size, a 2-fish bag limit, and an open season from July 1 through August 31. With the adoption and implementation of conservation equivalency, these particular management measures will not be applicable to summer flounder in 2023.

Comments on Black Sea Bass Measures

Comment 7: NRDC commented that the 7.14-million lb (3,239 mt) black sea bass harvest target for 2023 is above the 6.57-million lb (2,981 mt) RHL specified for 2023 (88 FR 11, January 3, 2023), argued that including dead discards would exceed the 9.16-million lb (4,156 mt) recreational ACL, and alleged this violates the MSA.

Response: As explained in the response to Comment 5, the goal of the Percent Change Approach is to iteratively adjust management measures to achieve the RHL, while minimizing potential overreaction (overcorrection) to annual variability in the harvest estimates. From 2018 to 2021, recreational management measures for summer flounder, scup, and black sea bass remained unchanged, yet the estimated harvest varied by as much as 45 percent from year to year. Estimated black sea bass recreational catch ranged from 10.20 million lb to 16.17 million lb (4,626 to 7,335 mt) from 2018 to 2021 despite nearly all management measures remaining the same. Such significant differences in estimated catch under the same management measures (input controls) has made setting management measures in a manner that will precisely reach, but not exceed, a specific catch limit in any given year extremely challenging. Reacting to these large, uncertain swings in estimated harvest, by liberalizing or reducing those management controls in the subsequent year in an attempt to achieve a specific harvest target, has been unsuccessful by all standards. This has been particularly difficult with robust stocks, such as scup and black sea bass, which continue to grow even in situations where harvest has exceeded previously set limits. Such stocks that are readily and widely available to the recreational fishery because of their high abundance will continue to be harvested, even with very restrictive management measures, and the previous recreational measures-setting process would have continued to chase a target that has proven difficult to reach.

The Percent Change Approach allows managers to consider additional scientific information beyond an uncertain catch estimate when setting

recreational measures to achieve optimum yield. Based on an evaluation of the current harvest levels compared to the upcoming RHLs, and the biomass relative to the target, the Percent Change Approach prescribes the degree of change necessary to be achieved by the recreational management measures. When a stock is at a lower biomass (below the biomass target) the management responses are more precautionary. For example, even when harvest is expected to be close to the upcoming RHL, a 10-percent reduction is required for a stock in the low biomass category. For stocks such as black sea bass that have a very high biomass (more than 150 percent of the biomass target), a liberalization of no more than 10 percent would be allowed when harvest is close to the RHL. When harvest is expected to be higher than the RHL, a reduction is required regardless of stock size, but a reduction may be more significant for stocks at lower stock sizes. For stocks at very high biomass, a 10-percent reduction is required, and stocks at a high and low biomass are required to take a reduction based on the difference between the harvest estimate and RHL. This is because the conservation risk associated with overages is greater for stocks that are less abundant, whereas stocks that are well above their target biomass are more robust in the face of higher levels of fishing mortality.

Application of the Percent Change Approach and the RDM resulted in a recommendation of a 10-percent reduction in black sea bass harvest in 2023. This is because black sea bass has a very high biomass, but harvest under status quo measures is expected to be above the RHL. As healthy stocks increase, sometimes far above the target biomass level, such as with black sea bass and scup in 2023, the fish become more available to the fishery, even under restrictive measures, resulting in catch estimates that exceed the RHL. However, what appear to be overages often have no negative biological impact on abundant stocks. We continue to see increases in biomass of these stocks through subsequent stock assessments. The conservation risk of the Percent Change Approach, which reduces the magnitude of a needed reduction compared to what would occur with the previous approach, on a stock that is over 150 percent of its biomass target, is negligible. The Magnuson-Stevens Act defines overfishing as a "rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield *on a continuing basis*" (emphasis added).

This scenario in which a stock continues to maintain a biomass significantly above the target, does not constitute overfishing.

It is important to again note the uncertainty in estimated recreational harvests; this uncertainty is one of the main drivers for adoption of the Percent Change Approach in Framework 17 and for being used in this action. Here, the 80-percent CI around the estimated black sea bass recreational harvest using status quo measures ranges from 7.17 million lb (3,252 mt) to 8.63 million lb (3,914 mt), meaning that statistically the estimate can fall anywhere in that range with equal likelihood. If recreational harvest is at the lower end of the range, with the 10-percent reduction adopted here, the recreational harvest would fall below the RHL.

Comment 8: One member of the public commented that black sea bass measures should include: A closure in January and February; a bag limit of 10 fish over 12 inches (30.5 cm) from April 30 through July 15; a bag limit of 2 fish over 13 inches (33 cm) from July 15 through September 1; and a bag limit of 10 fish over 13 inches (33 cm) from September 2 through December 31. A second individual argued the goal of changing measures for 2023 is to reduce recreational demand, not to increase it, and argued that increasing the minimum size for black sea bass increases the recreational demand. We also received several comments that expressed dissatisfaction with the specific state regulations that are being implemented to meet the conservationally equivalent reduction in recreational harvest of 10 percent.

Response: This rule does not implement state-specific measures for black sea bass, but rather waives the Federal recreational measures for black sea bass. Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. States and regions set their own management measures, which are approved through the Commission process.

The combination of state or regional measures must achieve equivalent conservation as the non-preferred coastwide measures. The coastwide harvest target was calculated using the Percent Change Approach and the RDM. The non-preferred coastwide measures that are being waived include a 15-inch (38.1-cm) minimum size, a 5-fish bag limit, and an open season from May 15 through September 8. The precautionary

default measures remain unchanged and include a 16-inch (40.6-cm) minimum size, a 2-fish bag limit, and an open season June 1 through August 31. With the adoption and implementation of conservation equivalency, these particular management measures will not be applicable to black sea bass in 2023.

Comments on Scup Measures

Comment 9: NRDC commented that the 14.31-million lb (6,490 mt) scup harvest target for 2023 is above the 9.27-million lb (4,205 mt) RHL specified for 2023 (88 FR 11, January 3, 2023), argued that including dead discards would exceed the 10.39-million lb (4,713 mt) recreational ACL, and alleged this violates the MSA.

Response: As explained in the responses to Comments 5 and 7, the goal of the Percent Change Approach is to iteratively adjust management measures to achieve the RHL, while minimizing potential overreaction (overcorrection) to annual variability in the harvest estimates.

Application of the Percent Change Approach and the RDM resulted in a recommendation of a 10-percent reduction in scup harvest in 2023. This is because scup has a very high biomass, but harvest under status quo measures is expected to be above the RHL. As described in response to Comment 7, fish become more available to the fishery as healthy stocks increase, even under restrictive measures, resulting in catch estimates that exceed the RHL. However, what appear to be overages often have no negative biological impact on abundant stocks. We continue to see increases in biomass of these stocks through subsequent stock assessments. This scenario in which a stock continues to maintain a biomass significantly above the target does not constitute overfishing.

It is important to again note the uncertainty in estimated recreational harvests. This uncertainty is one of the main drivers for adoption of the Percent Change Approach in Framework 17 and for being used in this action. Here, the 80-percent CI around the estimated scup recreational harvest using status quo measures ranges from 11.55 million lb (5,216 mt) to 16.26 million lb (7,375 mt), meaning that statistically the estimate can fall anywhere in that range with equal likelihood. With the 10-percent reduction adopted here, recreational harvest of scup could be anywhere from 10.39 million pounds (4,715 mt) to 14.63 million pounds (6,638 mt), a range from 12 percent to 58 percent over the RHL. With such high scup biomass, making drastic adjustments of

recreational catch may prove to be unwarranted as stocks increase; thus, the Percent Change Approach adopted in Framework 17 established a 10-percent reduction in this circumstance. To the extent that biomass remains high and additional reductions are needed the next time that recreational measures are developed, another 10-percent reduction would occur, moving gradually in the needed direction. However, in contrast with the inherent variability and uncertainty in recreational catch data in the context of a growing scup stock, drastic changes to measures could prove to be unwarranted, and could lead to the undesirable result of increased recreational discards of dead fish.

Furthermore, a determination of overfishing involves analysis of total catch, which included commercial catch as well as recreational catch. An overage of the recreational ACL does not necessarily mean that the overall ABC was exceeded if underharvest of the commercial ACL is equal to or greater than that overage of the recreational ACL. While separate sub-ACLs are allocated to the commercial and recreational fisheries, overfishing is a biological determination at the stock level, not the sub-ACL level. The commercial fishery did not completely harvest its commercial quota in any year between 2016 and 2021. The commercial underharvest in those years ranged between 16 percent and 44 percent. Moreover, from 2018 to 2021, the commercial sector only landed between 55 percent and 63 percent of its allocated scup quota, an annual average of 13.42 million lb (6,087 mt) landed compared to 22.67 million lb (10,283 mt) of commercial quota. In such a scenario, a recreational harvest slightly above the RHL is unlikely to result in negative biological consequences for the scup stock where the overall total of commercial and recreational harvests remains below the overall ABC and overfishing levels.

Comment 10: MADMF commented in support of the proposed scup measures. It highlighted that the regional approach for recreational scup management has often meant that the Southern States largely align their rules with the Federal measures while the Northern States amend their regulations to shoulder most of the burden needed to achieve, but not exceed, the recreational harvest target. Further, MADMF noted that all States from Massachusetts through North Carolina are closed to recreational black sea bass harvest during the months of January through April (with the rare exception of those that opt into the February access program), and the

scup closure will help limit non-compliance with the black sea bass retention prohibition and will help reduce regulatory discards of black sea bass, including discards of fish generally caught at deeper depths during this time of year that are more susceptible to barotrauma.

Response: We agree, and have implemented scup recreational management measures for Federal waters as proposed.

Comment 11: The SBCBA commented that closing the scup fishery from January through April does not benefit the healthy stock, but economically harms the party/charter industry. It argued the winter scup fishery is one of the only options to target a healthy stock during that portion of the year.

However, SBCBA also stated there is little party/charter activity targeting scup in Federal waters in winter and noted there is no data from that part of the year available from MRIP. One individual argued that for-hire captains looking for scup during the winter have learned how to minimize any interaction with black sea bass during winter and recommended that scup possession should be allowed all year with a 25-fish possession limit and a 10-inch (25.4-cm) minimum size.

Response: We disagree. The Council and Commission voted for the Federal scup fishery to be closed January 1 through April 30 and for the Federal possession limit to be reduced from 50 fish to 40 fish to complement state measures and to achieve the required 10-percent reduction. The RDM cannot separate the analysis of Federal measures and state measures, and therefore included the Federal closure along with the state closures in the analysis of measures necessary to achieve the 10-percent reduction. Accordingly, we have implemented scup recreational management measures for Federal waters as proposed.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible. This action implements 2023 recreational

management measures for summer flounder, scup, and black sea bass.

The Federal coastwide regulatory measures for recreational summer flounder fishing that were codified last year (87 FR 22863, April 18, 2022) remain in effect until the decision to waive Federal measures for 2023 is made effective by this final rule. Many states have already implemented their conservationally equivalent 2023 measures and a delay in implementing the measures of this rule will increase confusion on what measures are in place in Federal waters. Inconsistencies between the states' measures and the Federal measures could lead to misunderstanding of the applicable regulations and could increase the likelihood of noncompliant landings. Additionally, the Federal measures currently in place are more restrictive than many of the measures in state waters, which unnecessarily disadvantages federally permitted vessels who are subject to these more restrictive measures until this final rule is effective.

The Federal measures currently in place for scup are more liberal than the measures this action will implement. Further delay of the implementation of the 2023 measures will increase the likelihood that the 2023 RHL and recreational ACL will be exceeded. The MSA requires that we implement measures to constrain recreational harvest to prevent overfishing.

Unlike actions that require an adjustment period to comply with new rules, this action does not require recreational and charter/party operators to purchase new equipment or otherwise expend time or money to comply with this action's management measures. Rather, compliance with this final rule simply means adhering to the published state management measures for summer flounder and black sea bass while the recreational and charter/party operators are engaged in fishing activities.

For these reasons, the Assistant Administrator finds good cause to waive the 30-day delay in the date of effectiveness and to implement this rule upon the date of publication in the **Federal Register**.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the

certification was published in the proposed rule and is not repeated here. We received no comments regarding this certification. Therefore, a final regulatory flexibility analysis was not required and none was prepared.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 4, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

- 1. The authority citation for part 648 continues to read as follows:

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

- 2. In § 648.104, revise paragraph (b) to read as follows:

§ 648.104 Summer flounder size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder is 18 inches (45.72 cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under § 648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

- 3. Revise § 648.105 to read as follows:

§ 648.105 Summer flounder recreational fishing season.

No person may fish for summer flounder in the EEZ from May 15 through September 22 unless that

person is the owner or operator of a fishing vessel issued a commercial summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this recreational fishing season. This time period may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters during this time is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

- 4. In § 648.106, revise paragraph (a) to read as follows:

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* No person shall possess more than three summer flounder in, or harvested from, the EEZ, per trip unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit, or unless otherwise specified in the conservation equivalency measures at § 648.107. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102. Possession of summer flounder harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

- 5. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2023 are the conservation equivalent of the season, size limits, and

possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 6. Revise § 648.127 to read as follows:

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a scup moratorium permit under § 648.4(a)(6), may possess scup from May 1 through December 31, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Should the recreational fishing season be modified, non-federally permitted scup vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

■ 7. In § 648.128, revise paragraph (a) to read as follows:

§ 648.128 Scup possession restrictions.

(a) No person shall possess more than 40 scup in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122. However, possession of scup harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

■ 8. Revise § 648.146 as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through September 8, unless otherwise specified in the

conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 9. In § 648.147, revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 15 inches (38.1 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151. However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 10. Revise § 648.151 to read as follows:

§ 648.151 Black sea bass conservation equivalency.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2023 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a). This determination is based on a recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting black sea bass in or from the EEZ and subject to the recreational fishing measures of this part, landing black sea bass in a state whose fishery management measures are determined by the Regional Administrator to be conservation

equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a), respectively, due to the lack of, or the reversal of, a conservation-equivalent recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—June 1 through August 31; minimum size—16 inches (40.64 cm); and possession limit—2 fish.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD127]

Fisheries of the Exclusive Economic Zone Off Alaska; “Other Rockfish” in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of “other rockfish” in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2023 “other rockfish” total allowable catch (TAC) in the Aleutian Islands subarea of the BSAI has been reached.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 12, 2023, through 2400 hours, A.l.t., December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2023 “other rockfish” TAC in the Aleutian Islands subarea of the BSAI is 380 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023). In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2023 “other

rockfish” TAC in the Aleutian Islands subarea of the BSAI has been reached. Therefore, NMFS is requiring that “other rockfish” in the Aleutian Islands subarea of the BSAI be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except “other rockfish” species in the Aleutian Islands subarea caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent

NMFS from responding to the most recent fisheries data in a timely fashion, and would delay prohibiting retention of “other rockfish” in the Aleutian Islands subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 9, 2023.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: August 10, 2023.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–17489 Filed 8–11–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 88, No. 156

Tuesday, August 15, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM–2023–0017]

RIN 3206–AO60

Prevailing Rate Systems; Abolishment of Allegheny, Pennsylvania, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to abolish the Allegheny, Pennsylvania, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Cuyahoga County, Ohio, to the Macomb, Michigan, NAF wage area; Trumbull County, OH, to the Niagara, New York, NAF wage area; Allegheny and Butler Counties, PA, to the Cumberland, PA, NAF wage area; Harrison County, West Virginia, to the Prince William, Virginia, NAF wage area; and Westmoreland County, PA, will no longer be defined. These changes are necessary because NAF FWS employment in the survey area is now below the minimum criterion of 26 wage employees to maintain a wage area, and the local activities no longer have the capability to conduct local wage surveys.

DATES: Send comments on or before September 14, 2023.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <http://www.regulations.gov>.

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: The Allegheny, Pennsylvania, NAF FWS wage area is presently composed of one survey county, Allegheny County, PA, and five area of application counties: Cuyahoga and Trumbull Counties, OH; Butler and Westmoreland Counties, PA; and Harrison County, WV. Under section 532.219 of title 5, Code of Federal Regulations, the OPM may establish a NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, a local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that there has been a continuing decline of NAF FWS employment in the survey area and the local activities no longer have the capability to conduct local wage surveys. Currently, 11 DOD NAF FWS employees and 13 Department of Veterans Affairs NAF FWS employees work in Allegheny County.

Since Cuyahoga and Trumbull Counties, OH; Allegheny and Butler Counties, PA; and Harrison County, WV, will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be defined as areas of application to other wage areas. Section 532.219 lists the regulatory criteria OPM considers when defining FWS wage area boundaries. This regulation allows consideration of the following criteria: proximity of largest activity in each county, transportation facilities and commuting patterns, and similarities of the counties in overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

In selecting a wage area to which Cuyahoga County, OH, should be redefined, proximity favors the Macomb, MI, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Cuyahoga

County as an area of application to the Macomb NAF wage area.

In selecting a wage area to which Trumbull County, OH, should be redefined, proximity favors the Niagara, NY, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Trumbull County as an area of application to the Niagara NAF wage area.

In selecting a wage area to which Allegheny County, PA, should be redefined, proximity favors the Cumberland, PA, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Allegheny County as an area of application to the Cumberland NAF wage area.

In selecting a wage area to which Butler County, PA, should be redefined, proximity favors the Cumberland, PA, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Butler County as an area of application to the Cumberland NAF wage area.

In selecting a wage area to which Harrison County, WV, should be redefined, proximity favors the Prince William, VA, NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Harrison County as an area of application to the Prince William NAF wage area.

OPM is removing Westmoreland County from the wage area definition. There are no longer NAF FWS employees working in Westmoreland County. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas “shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.” Therefore, Westmoreland County should not be defined as part of a NAF wage area.

The Macomb wage area would consist of one survey county (Macomb County, MI) and 15 area of application counties (Alpena, Calhoun, Crawford, Grand Traverse, Huron, Iosco, Kent, Leelanau, Ottawa, Saginaw, Washtenaw, and Wayne Counties, MI; and Cuyahoga, Lucas, and Ottawa Counties, OH).

The Niagara wage area would consist of one survey county (Niagara County, NY) and four area of application counties (Trumbull County, OH; Erie and Genesee Counties, NY, and Erie County, PA).

The Cumberland wage area would consist of one survey county

(Cumberland County, PA) and four area of application counties (Allegheny, Blair, Butler, and Franklin Counties, PA).

The Prince William wage area would consist of one survey county (Prince William County, VA) and two area of application counties (Fauquier County, VA, and Harrison County, WV).

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Expected Impact of This Rule

Section 5343 of title 5, U.S. Code, provides OPM with the authority and responsibility to define the boundaries of NAF FWS wage areas. Any changes in wage area definitions can have the long-term effect of increasing pay for Federal employees in affected locations. OPM expects this final rule to impact approximately 26 NAF FWS employees. Considering the small number of employees affected, OPM does not anticipate this rulemaking will substantially impact local economies or have a large impact in local labor markets. However, OPM is requesting comment in this rulemaking regarding the impact. As this and future wage area changes may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets, OPM will continue to study the implications of such impacts in this or future rules as needed.

Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Regulatory Flexibility Act

OPM certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that this proposed rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Paperwork Reduction Act

This proposed rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix D to subpart B, amend the table by revising the wage area listing for the States of Michigan, New York, Pennsylvania, and Virginia to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

Michigan

Macomb

Survey Area

Michigan:

Macomb

Area of Application. Survey area plus:

Michigan:

Alpena
Calhoun
Crawford
Grand Traverse
Huron

Iosco
Kent
Leelanau
Ottawa
Saginaw
Washtenaw
Wayne

Ohio:

Cuyahoga
Lucas
Ottawa

* * * * *

NEW YORK

Jefferson

Survey Area

New York:

Jefferson

Area of Application. Survey area plus:

New York:

Albany
Oneida
Onondaga
Ontario
Schenectady
Steuben

Kings-Queens

Survey Area

New York:

Kings
Queens

Area of Application. Survey area plus:

New Jersey:

Essex
Hudson

New York:

Bronx
Nassau
New York
Richmond
Suffolk

Niagara

Survey Area

New York:

Niagara

Area of Application. Survey area plus:

New York:

Erie
Genesee

Ohio:

Trumbull
Pennsylvania:
Erie

Orange

Survey Area

New York:

Orange

Area of Application. Survey area plus:

New York:

Dutchess

Westchester
* * * * *

PENNSYLVANIA

Cumberland

Survey Area

Pennsylvania:
Cumberland

Area of Application. Survey area plus:

Pennsylvania:
Allegheny
Blair
Butler
Franklin

York

Survey Area

Pennsylvania:
York

Area of Application. Survey area plus:

Pennsylvania:
Lebanon

* * * * *

VIRGINIA

Alexandria-Arlington-Fairfax

Survey Area

Virginia (city):
Alexandria
Virginia (counties):
Arlington
Fairfax

Area of Application. Survey area.

Chesterfield-Richmond

Survey Area

Virginia (city):
Richmond
Virginia (county):
Chesterfield

Area of Application. Survey area plus:

Virginia (cities):
Bedford
Charlottesville
Salem

Virginia (counties):
Caroline
Nottoway
Prince George

West Virginia:
Pendleton

Hampton-Newport News

Survey Area

Virginia (cities):
Hampton
Newport News

Area of Application. Survey area plus:

Virginia (city):
Williamsburg
Virginia (county):

York

Norfolk-Portsmouth-Virginia Beach

Survey Area

Virginia (cities):
Norfolk
Portsmouth
Virginia Beach

Area of Application. Survey area plus:

North Carolina:
Pasquotank
Virginia (cities):
Chesapeake
Suffolk
Virginia (counties):
Accomack
Northampton

Prince William

Survey Area

Virginia:
Prince William

Area of Application. Survey area plus:

Virginia:
Fauquier
West Virginia:
Harrison

* * * * *

[FR Doc. 2023–17373 Filed 8–14–23; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

[Docket ID: OPM–2023–0018]

RIN 3206–AO61

Prevailing Rate Systems; Redefinition of the Northeastern Arizona and Utah Appropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel
Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to redefine the geographic boundaries of the Northeastern Arizona and Utah appropriated fund Federal Wage System (FWS) wage areas for pay-setting purposes. The proposed rule would redefine Washington County, UT, and several National Parks portions of Garfield, Grand, Iron, San Juan, and Wayne Counties, UT, to the Northeastern Arizona wage area. This change is based on a recent consensus recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC).

DATES: Send comments on or before September 14, 2023.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at pay-leave-policy@opm.gov.

SUPPLEMENTARY INFORMATION: OPM is proposing a rule to redefine the geographic boundaries of the Northeastern Arizona and Utah appropriated fund FWS wage areas. This proposed rule would redefine Washington County, UT; and the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions of Garfield County, UT; the Arches and Canyonlands National Parks portions of Grand County, UT; the Cedar Breaks National Monument and Zion National Park portions of Iron County, UT; the Canyonlands National Park portion of San Juan County, UT; and the Capitol Reef and Canyonlands National Parks portions of Wayne County from the Utah wage area to the Northeastern Arizona wage area. This change is based on a recent recommendation of FPRAC, the statutory national labor-management committee responsible for advising OPM on matters affecting the pay of FWS employees. From time to time, FPRAC reviews the boundaries of wage areas and provides OPM with recommendations for changes if the Committee finds that changes are warranted.

As provided by 5 CFR 532.211, this regulation allows consideration of the following criteria when defining wage area boundaries: distance, transportation facilities, and geographic features; commuting patterns; and similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Southern Utah has numerous National Parks, National Monuments, and National Recreation Areas, and National Park Service FWS employees often perform overlapping maintenance work at locations in the Northeastern Arizona wage area. FWS wage area definitions

have long accommodated placing National Parks in single wage areas because of close organizational relationships between groups of employees with different official duty stations in the same park.

Washington County is currently defined to the Utah area of application. Our analysis of the regulatory criteria indicates that Washington County would be more appropriately defined as part of the Northeastern Arizona wage area. When measuring to cities, the distance criterion favors the Utah wage area. When measuring to host installations, the distance criterion favors the Northeastern Arizona wage area. Washington County has a similar distribution of surveyable employment to the Northeastern Arizona survey area. All other criteria are inconclusive. Although a standard review of regulatory criteria shows that some factors are indeterminate, distance to the host installations and overall population, total private sector employment, and kinds and sizes of private industrial establishments do favor the Northeastern Arizona wage area. Based on this analysis, we recommend that Washington County be redefined to the Northeastern Arizona wage area.

Garfield County is currently defined to the Utah area of application. Our analysis of the regulatory criteria indicates that Garfield County is appropriately defined as part of the Utah area of application. The distance criterion favors the Utah wage area more than the Northeastern Arizona wage area. All other criteria are inconclusive. However, since we are recommending that the Canyonlands National Park portion of San Juan County be redefined to the Northeastern Arizona wage area, and because we believe Bryce Canyon and Canyonlands National Park should not be split between the Northeastern Arizona and the Utah wage areas, we recommend that the portions of Garfield County occupied by Canyonlands and Bryce Canyon National Parks be part of the Northeastern Arizona wage area. We also believe that the Capitol Reef National Park portion of Garfield County should be redefined to the Northeastern Arizona wage area because of the close proximity to the Bryce Canyon and Canyonlands National Parks. This change would ensure equal pay treatment for FWS employees at Bryce Canyon, Capitol Reef, and Canyonlands National Parks are paid from the same wage schedule. The remaining portion of Garfield County would continue to be part of the Utah wage area. We believe the mixed nature of our regulatory analysis findings

indicates that the remaining locations in Garfield County remain appropriately defined to the Utah wage area, with distance being the deciding factor.

Grand County is currently defined to the Utah area of application. Our analysis of the regulatory criteria indicates that Grand County is appropriately defined as part of the Utah area of application. When measuring to cities, the distance criterion favors the Utah wage area. When measuring to host installations, the distance criterion favors the Northeastern Arizona wage area. However, since we are recommending that the Canyonlands National Park portion of San Juan County be redefined to the Northeastern Arizona wage area, and because we believe Canyonlands National Park should not be split between the Northeastern Arizona and the Utah wage areas, we recommend that the portion of Grand County occupied by Canyonlands National Park be part of the Northeastern Arizona wage area. We also believe that the Arches National Park portion of Grand County should be redefined to the Northeastern Arizona wage area because of the close proximity to the Canyonlands National Park. This change would provide equal pay treatment for FWS employees at the two national parks. The remaining portion of Grand County would continue to be part of the Utah wage area. We believe the mixed nature of our regulatory analysis findings indicates that the remaining locations in Grand County remain appropriately defined to the Utah wage area, with distance being the deciding factor.

Iron County is currently defined to the Utah area of application. Our analysis of the regulatory criteria indicates that Iron County is appropriately defined as part of the Utah area of application. The distance criterion favors the Utah wage area more than the Northeastern Arizona wage area. Iron County has a similar distribution of surveyable employment to the Northeastern Arizona survey area. All other criteria are inconclusive. However, since we are recommending that Washington County be redefined to the Northeastern Arizona wage area, and because we believe Zion National Park should not be split between the Northeastern Arizona and the Utah wage areas, we recommend that the portion of Iron County occupied by Zion National Park be part of the Northeastern Arizona wage area. We also believe that the Cedar Breaks National Monument portion of Iron County should be redefined to the Northeastern Arizona wage area because

of the close proximity to the Zion National Park. This change would provide equal pay treatment for FWS employees at the two national parks. We believe the mixed nature of our regulatory analysis findings indicates that the remaining locations in Iron County remain appropriately defined to the Utah wage area, with distance being the deciding factor.

San Juan County, except for the Canyonlands National Park portion, is currently defined to the Northeastern Arizona area of application. The distance and commuting patterns criteria for San Juan County favor the Northeastern Arizona wage area more than the Utah wage area. All other criteria are inconclusive. Since the remaining locations in San Juan County are already defined to the Northeastern Arizona wage area, we recommend that the portion of San Juan County occupied by Canyonlands National Park be part of the Northeastern Arizona wage area. An additional factor to weigh in the decision to redefine entire San Juan County the Northeastern Arizona wage area is that the American Federation of Government Employees believes that recent economic developments in the area indicate some linkage between San Juan County and the Northeastern Arizona wage area.

Wayne County is currently defined to the Utah area of application. Our analysis of the regulatory criteria indicates that Wayne County is appropriately defined as part of the Utah area of application. The distance and commuting patterns criteria for Wayne County favor the Utah wage area more than the Northeastern Arizona wage area. All other criteria are inconclusive. However, since we are recommending that the Canyonlands National Park portion of San Juan County be redefined to the Northeastern Arizona wage area, and because we believe Canyonlands National Park should not be split between the Northeastern Arizona and the Utah wage areas, we recommend that the portion of Wayne County occupied by Canyonlands National Park be part of the Northeastern Arizona wage area. We also believe that the Capitol Reef National Park portion of Wayne County should be redefined to the Northeastern Arizona wage area because of the close proximity to the Canyonlands National Park. This change would provide equal pay treatment for FWS employees at the two national parks. The remaining portion of Wayne County would continue to be part of the Utah wage area. We believe the mixed nature of our regulatory analysis findings indicates that the remaining locations in Wayne

County remain appropriately defined to the Utah wage area, with distance and commuting being the deciding factors.

FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. This change would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Expected Impact of This Rule

Section 5343 of title 5, U.S. Code, provides OPM with the authority and responsibility to define the boundaries of FWS wage areas. Any changes in wage area boundaries can have the long-term effect of increasing pay for FWS employees in affected locations. OPM expects this rulemaking to impact approximately 100 FWS employees. Of the changes this rulemaking implements, the most significant change in terms of the number of impacted employees would be in Washington County, UT, where approximately 32 FWS employees would be affected. Considering the small number of employees affected, OPM does not anticipate this rulemaking will have a substantial impact on the local economies or a large impact in the local labor markets. However, OPM is requesting comment in this proposed rule regarding the impact. OPM will continue to study the implications of such impacts in this or future rules as needed, as this and future changes in wage area definitions may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets.

Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Regulatory Flexibility Act

OPM certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Federalism

OPM has examined this proposed rule in accordance with Executive Order 13132, Federalism, and have determined that this proposed rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

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

Paperwork Reduction Act

This proposed rule does not impose any reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In appendix C to subpart B, amend the table by revising the wage area listings for the States of Arizona and Utah to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

ARIZONA

Northeastern Arizona

Survey Area

Arizona:

Apache
Coconino
Navajo

New Mexico:

McKinley
San Juan

Area of Application. Survey area plus:
Colorado:

Dolores

Gunnison (Only includes the
Curecanti National Recreation Area
portion)

La Plata

Montezuma

Montrose

Ouray

San Juan

San Miguel

Utah:

Garfield (Only includes the Bryce
Canyon, Capitol Reef, and
Canyonlands National Parks
portions)

Grand (Only includes the Arches and
Canyonlands National Parks
portions)

Iron (Only includes the Cedar Breaks
National Monument and Zion
National Park portions)

Kane

San Juan

Washington

Wayne (Only includes the Capitol
Reef and Canyonlands National
Parks portions)

Phoenix

Survey Area

Arizona:

Gila

Maricopa

Area of Application. Survey area plus:

Arizona:

Pinal

Yavapai

Tucson

Survey Area

Arizona:

Pima

Area of Application. Survey area plus:

Arizona:

Cochise

Graham

Greenlee

Santa Cruz

* * * * *

UTAH

Utah

Survey Area

Utah:

Box Elder

Davis

Salt Lake

Tooele

Utah

Weber

Area of Application. Survey area plus:

Utah:

Beaver

Cache

Carbon
 Daggett
 Duchesne
 Emery
 Garfield (Does not include the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions)
 Grand (Does not include the Arches and Canyonlands National Parks portions)
 Iron (Does not include the Cedar Breaks National Monument and Zion National Park portions)
 Juab
 Millard
 Morgan
 Piute
 Rich
 Sevier
 Sanpete
 Summit
 Uintah
 Wasatch
 Wayne (Does not include the Capitol Reef and Canyonlands National Parks portions)

* * * * *

[FR Doc. 2023-17374 Filed 8-14-23; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Doc. No. AMS-DA-22-0064]

RIN 0581-AE20

Plant Records To Include Grade Label Butterfat Testing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites comments on a proposed amendment to the plant records requirement for the Agricultural Marketing Service (AMS) Dairy Grading and Inspection program. The proposal would allow butterfat tests to be performed at an in-house or approved third party laboratory and add a requirement for plants to maintain and make such records available for examination by a United States Department of Agriculture (USDA) inspector. This amendment would increase efficiency by conforming to current industry practice.

DATES: Comments on proposed amendments must be received by October 16, 2023 to be assured of consideration. Comments on the proposed information collection and the associated burden must also be received by October 16, 2023.

ADDRESSES: Interested persons are invited to submit comments on this proposed rule. Comments may be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number, date, and page number of this issue of the **Federal Register**. Written comments may be submitted via mail to USDA/AMS/Dairy Programs, Stop 0225-Room 2530, 1400 Independence Avenue SW, Washington, DC 20250-0225. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Matthew M. Siedschlaw, Grading and Standardization Division, Dairy Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2756—South Building, 1400 Independence Avenue SW, Washington, DC 20250-0230; Telephone: (202) 937-4901; Email: Matthew.Siedschlaw@usda.gov.

SUPPLEMENTARY INFORMATION: The Secretary of Agriculture is authorized by the Agricultural Marketing Act (AMA) of 1946, as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy inspection and grading services to facilitate the orderly marketing of and enable consumers to purchase high quality dairy products. Plants participating in the voluntary, fee-based AMS Dairy Grading and Inspection Program process milk into dairy foods that enter commerce as retail products, ingredients for further processing, purchases for Federal food assistance programs, and exports to other countries. Services provided by the program enhance the marketability and add value to dairy and foods that contain dairy. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to be graded against official quality standards and specifications established by AMS. Dairy products tested and graded by AMS have certificates issued describing the product's quality and condition.

Historically, when the Grading and Inspection Program was implemented, the quality of butter was inconsistent, and quality-control testing by USDA was necessary to ensure a consistent product for the market. Today, plants more consistently manufacture high-quality butter products and maintain the

butterfat standard necessary to be granted a USDA grade label for butter.

Currently, USDA inspectors or designated plant personnel perform tests of butter samples that have been selected by a USDA inspector for quality control on randomized batches of finished product pursuant to 7 CFR 58.338. Testing frequency varies by the volume of butter processed and whether a batch is randomly selected. Typically, USDA conducts monthly or weekly testing depending on the volume of butter processed. It is also current industry practice for plants to perform routine internal tests on their butter products to ensure quality and compliance with composition standards. Specific requirements for these tests are outlined in 7 CFR 58.336.

During manufacturing it is normal to have fluctuations in butterfat composition at different stages in butter making, and consequently test results may not be consistent throughout the process. Therefore, butter processing facilities continually monitor butterfat composition throughout production and make necessary adjustments to maintain the 80% butterfat required for butter (7 CFR 58.305). The facility maintains these monitoring records as part of its internal quality program and testing requirements.

Under the current Dairy Grading and Inspection program, USDA conducts a single butterfat test at the time of grading, which provides a limited perspective on overall butterfat composition of butter manufactured by the plant.

The proposed amendments would exempt plants from butterfat testing administered by a USDA inspector and allow in-plant quality control testing to satisfy butterfat testing requirements. The proposal would replace testing performed by a USDA inspector at the time of grading with a review of a plant's testing records. A records review of a plant's routine testing rather than a single-point test would provide a more accurate picture of whether the plant's butter products meet quality standards. It would also reduce costs to a facility by eliminating duplicate butterfat testing by a USDA inspector that it currently must pay for. As explained in the Regulatory Flexibility Analysis below, AMS estimates adopting a records review would save participating plants \$4,560 to \$31,450 annually.

Currently, the final butter product must contain a minimum of 80% butterfat by weight for it to comply with the regulations. That would not change as a result of the proposed amendment. However, under the proposal, AMS would annually review each plant's

butterfat test records to gauge the facility's compliance with the regulations. Butterfat tests are already conducted as a normal, standard business operating procedure by plants engaged in the manufacture of butter. If a facility is out of compliance, AMS would perform more frequent reviews to see what preventative and corrective actions are being taken. Failure to rectify the problem could result in ineligibility to use the USDA Grade Label shield on products produced by the facility.

Records inspected would include plant records of butterfat tests performed as required under 7 CFR 58.336, and analysis of records. The change to the recordkeeping requirements would apply to records kept in the regular course of business by the plant. As records would be reviewed on-site by USDA inspectors, plants would not be required to submit information to the agency.

Finally, AMS is proposing a revision of an administrative nature to correct a misspelling in the regulations. A proposed revision to § 58.336(a) would replace the word "insure" with "ensure."

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. Chapter 35), AMS has requested approval of new information collection and recordkeeping requirements for the Dairy Grading and Inspection Program and comments are invited on this new information collection. All comments received on this information collection will be summarized and included in the final request for Office of Management and Budget (OMB) approval.

Title: Regulations Governing the Review of Butterfat Testing Records for the Dairy Grading and Inspection Butter Program.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of New Information Collection.

Abstract: The Dairy Grading and Inspection program is a voluntary, fee-based program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621–1627). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. Under the program, a plant can submit to grading and inspection of its butter products by a USDA grader following the U.S. Grade Standards to ensure each product meet the U.S. grade requirements. This program provides uniform quality of

dairy products in the marketplace. The information collection requirements in this request are essential to carry out the intent of the AMA—to ensure that dairy products are produced under sanitary conditions and buyers are purchasing a quality product.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 2.5 hours per year.

Recordkeepers: Butter manufacturers.

Estimated Number of Recordkeepers: 17.

Estimated Number of Hours per Recordkeeper: 2.5 hours.

Estimated Total Annual Burden on Recordkeepers: 42.5 hours.

The information collection seeks to replace testing by USDA inspectors with an annual review of a plant's butterfat testing records. The review encompasses plant records of butterfat tests performed as required under 7 CFR 58.336, and analysis of records. Plants seeking USDA inspection for butter grading conduct their own routine, audited, butterfat tests to ensure quality and compliance with composition standards. The information sought in this collection is contained in records kept in the regular course of business by the inspected facility. Records would be reviewed on-site by a USDA inspector. The facility would not be required to submit information to the agency.

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601, *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Orders 12866 and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of the action on small entities. Accordingly, AMS has prepared this Regulatory Flexibility Analysis (RFA).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. The Small Business Administration's definition (13 CFR 121.201) of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small butter manufacturers processors are defined as having 750 or fewer employees. Seventeen plants producing grade label butter in the U.S. participate in the Grade Label Program. According to AMS calculations, about 12, or approximately two-thirds, are operated by dairy farmer cooperatives, while the remaining 5 are independently owned. AMS estimates that six of 17 the participating butter processors would be considered small businesses.

AMS has determined that establishment of this proposal would not have a significant economic impact on small entities. The Dairy Grading and Inspection Program is a voluntary program. Small businesses have the option to participate. The proposed change would not unduly or disproportionately burden small butter processing entities. It would reduce costs to small businesses by eliminating a redundant butterfat test currently performed by USDA. AMS estimates the cost to plants for meeting USDA butterfat testing requirements ranges from \$5,000 to \$32,000 annually. The significant cost difference depends on whether the plant has an approved onsite laboratory or must ship samples to an outside AMS laboratory, and the frequency of butterfat samples submitted for testing.

The change would replace the USDA-inspector's test with a review of records of butterfat tests that manufacturers currently conduct in the normal course

of business to ensure quality and compliance with composition standards. The plants would be charged for the inspectors' time to conduct the records review, estimated to take four hours annually. At an hourly rate of \$110, a records review would cost the plant approximately \$440. This results in annual net saving to plants ranging from \$4,560 to \$31,560.

Program provisions would be applied uniformly to both large and small businesses and would not be expected to burden small entities unduly or disproportionately.

Executive Order 13175

This proposed rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

List of Subjects in 7 CFR Part 58

Dairy product, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 58 as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

- 1. The authority for part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

- 2. Amend § 58.148 by adding paragraph (h) to read as follows:

§ 58.148 Plant records.

* * * * *

- (h) Butterfat test records. Retain for 12 months.

- 3. Amend § 58.336 by revising paragraphs (a) and (b) to read as follows:

§ 58.336 Frequency of sampling for quality control of cream, butter and related products.

(a) *Microbiological.* Samples shall be taken from churnings or batches and should be taken as often as is necessary to ensure microbiological control.

(b) Sampling and testing. (1) Composition. Sampling and testing for

product composition shall be made on churns or batches as often as is necessary to insure adequate composition control. For in-plant control, the Kohman or modified Kohman test may be used.

(2) Sampling. Butterfat sampling may be performed as part of an in-plant quality program.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–17052 Filed 8–14–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0555; FRL–11148–01–R5]

Air Plan Approval; Illinois; Base Year Emissions Inventory for the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), revisions to the State Implementation Plan (SIP) submitted by the Illinois Environmental Protection Agency on October 22, 2020, and February 14, 2023. The revisions address the emissions inventory requirements for the Chicago and Metro-East nonattainment areas under the 2015 ozone National Ambient Air Quality Standard. The Chicago nonattainment area includes Cook, DuPage, Grundy (Aux Sable and Goose Lake Townships), Kane, Kendall (Oswego Township), Lake, McHenry, and Will counties. The Metro-East nonattainment area includes Madison, Monroe, and St. Clair counties. The CAA requires emissions inventories for all ozone nonattainment areas.

DATES: Comments must be received on or before September 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0555 at <https://www.regulations.gov> or via email to blakley.pamela@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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. 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://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Emily Crispell, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8512, crispell.emily@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives such comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 8, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–17342 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R01–RCRA–2023–0264; FRL–11231–01–R1]

New Hampshire: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: New Hampshire has applied to the Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. The EPA proposes to grant final authorization to New Hampshire for these revisions by a direct final rule, which can be found in the “Rules and Regulations” section of this **Federal Register**. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless EPA receives written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposed rule.

DATES: Send your written comments by September 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–RCRA–2023–0264, at <https://www.regulations.gov/>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.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, the full

EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:

Tulasi Landes, RCRA Waste Management and Lead Branch; Land, Chemicals and Redevelopment Division; EPA Region 1, 5 Post Office Square, Suite 100 (Mail code 07–1), Boston, MA 02109–3912; phone: (617) 918–1228; email: landes.tulasi@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” section of this **Federal Register**, the EPA is authorizing the revisions by a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless the EPA receives adverse written comments that oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and the EPA will not take further action on this proposal. If the EPA receives comments that oppose this action, we will withdraw the direct final rule and it will not take effect. The EPA will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you should do so at this time. For additional information, please see the direct final rule published in the “Rules and Regulations” section of this **Federal Register**.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 8, 2023.

David W. Cash,

Regional Administrator, U.S. EPA Region 1.

[FR Doc. 2023–17388 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R08–RCRA–2023–0033; FRL–10606–01–R8]

Montana: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant authorization to the State of Montana for the changes to its hazardous waste program under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State’s changes through a direct final action which can be found in the “Rules and Regulations” section of this **Federal Register**. In addition, the EPA is proposing to codify in the regulations entitled “Approved State Hazardous Waste Management Programs,” Montana’s authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under RCRA.

DATES: Send written comments by September 14, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2023–0033 at <https://www.regulations.gov/>. Follow the detailed instructions for submitting comments electronically or by other methods in the **ADDRESSES** section of the direct final rule located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Moye Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; telephone number: (303) 312–6667, email address: lin.moye@epa.gov.

SUPPLEMENTARY INFORMATION: In the “Rules and Regulations” section of this **Federal Register**, the EPA is authorizing changes to the Montana program, in addition to codifying and incorporating by reference the State’s hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe

these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this authorization and incorporation by reference in the preamble to the direct final rule.

Unless EPA receives written comments that oppose the authorization and incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose the authorization, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

Dated: August 8, 2023.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2023-17499 Filed 8-14-23; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 174, and 180

[Docket No. PHMSA-2016-0015 (HM-263)]

RIN 2137-AF21

Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On June 27, 2023, PHMSA published a notice of proposed rulemaking, titled “Hazardous Materials: FAST Act Requirements for Real-Time Train Consist Information (HM-263),” proposing amendments to the Hazardous Materials Regulations to require all railroads to generate in electronic form, maintain, and provide to first responders, emergency response officials, and law enforcement personnel, certain information regarding hazardous materials in rail transportation to enhance emergency response and investigative efforts. In response to a request for an extension of the comment period submitted by the American Short Line and Regional

Railroad Association (ASLRRA), PHMSA is extending the comment period for the HM-263 notice by an additional 60 days. Comments to the HM-263 notice will now be due by October 27, 2023.

DATES: Comments should be received on or before October 27, 2023. To the extent possible, PHMSA will consider late-filed comments.

ADDRESSES: Comments should reference Docket No. PHMSA-2016-0015 (HM-263) and may be submitted in the following ways:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Dockets Management System, U.S. Department of Transportation, Dockets Operations, M-30, Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

- *Hand Delivery:* To the Docket Management System: Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: All submissions must include the Agency name and Docket Number for this notice (PHMSA-2016-0015) at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read associated documents or comments received, go to <http://www.regulations.gov> or DOT’s Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its process. DOT posts these comments without change, including any personal information the commenter provides, to <http://www.regulations.gov>, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at <http://www.dot.gov/privacy>.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA; 5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily

treated as private, that you treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN” for “proprietary information.” Submissions containing CBI should be sent to Dirk Der Kinderen, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Any commentary that PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Dirk Der Kinderen, Standards and Rulemaking Division, 202-366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

I. Background

On June 27, 2023, PHMSA published the HM-263 notice of proposed rulemaking (NPRM)¹ in response to statutory mandates in the “Fixing America’s Surface Transportation Act”,² as amended, and a National Transportation Safety Board safety recommendation; and complements existing regulatory requirements pertaining to the generation, maintenance, and provision of similar information in hard copy form, as well as other hazard communication requirements. PHMSA’s proposal will require all railroads transporting hazardous materials to generate in electronic form train consist information, maintain that information off-the-train, update that information in real-time, and provide that information to authorized emergency response personnel in advance of their arrival to an accident or incident. As such, railroads operating a train carrying hazardous materials will be required to push that information to state authorized local first responders promptly following either an accident involving that train, or an incident involving the release or suspected release of hazardous material from that train. Railroads must also ensure that, in updating that electronic train consist information, they also update hard (printed) copy versions of the same information provided to train crews such that both hard (printed) copy and electronic versions of that information

¹ 88 FR 41541.

² Public Law 114-94.

are consistent, accurate, and available when needed most.

II. Comment Period Extension

PHMSA initially provided a 60-day comment period for the HM-263 NPRM, which closes on August 28, 2023. In response to a request to extend the comment period from ASLRRRA,³ PHMSA is extending the comment period for an additional 60 days. ASLRRRA requested the extension to allow additional time to gather feedback on the economic impacts of the rulemaking from its member railroads—the majority of which are small businesses. The comment period will now close on October 27, 2023. This extension provides the public with an additional 60 days and should provide adequate opportunity for the public to submit comments; however, PHMSA may, at its discretion, extend the comment period further if necessary. To the extent possible, PHMSA will also consider late-filed comments.

Issued in Washington, DC, on August 10, 2023, under authority delegated in 49 CFR part 1.97.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2023–17472 Filed 8–14–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 230802–0182]

RIN 0648–BL87

Endangered and Threatened Wildlife and Plants; Proposed Protective Regulations for the Threatened Banggai Cardinalfish (*Pterapogon kauderni*)

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

ACTION: Proposed rule; request for comments; notice of availability of a draft environmental assessment.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) shall issue protective regulations the

Secretary deems necessary and advisable for the conservation of species listed as threatened. The Secretary may apply any of the prohibitions in section 9 of the ESA. This proposed rule would promulgate protective regulations to apply a subset of the ESA section 9 prohibitions to the Banggai cardinalfish (*Pterapogon kauderni*). We also announce the availability of a draft environmental assessment (EA) that analyzes the environmental impacts of this action, and solicit comments regarding this action and the draft EA.

DATES: Comments regarding the proposed rule and supporting documents may be sent to the appropriate address (see **ADDRESSES**), no later than 5 p.m. Eastern Standard Time on October 16, 2023. A public hearing may be requested by September 29, 2023. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2023–0099, by Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <https://www.regulations.gov> and enter NOAA–NMFS–2023–0099 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

We will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Celeste Stout, NMFS, Office of Protected Resources, celeste.stout@noaa.gov, (301) 427–8436; Erin Markin, NMFS, Office of Protected Resources, erin.markin@noaa.gov, (301) 427–8416.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 2016, we published a final rule listing the Banggai cardinalfish (*Pterapogon kauderni*) as a

threatened species under the ESA (81 FR 3023). At that time, we summarized the process for considering the application of ESA section 9 prohibitions (16 U.S.C. 1538) to the threatened Banggai cardinalfish and stated that we would consider potential protective regulations pursuant to ESA section 4(d) (16 U.S.C. 1533(d)) for the Banggai cardinalfish in a future rulemaking.

The prohibitions listed under section 9(a)(1) of the ESA automatically apply when a species is listed as endangered but not when listed as threatened. In the case of a threatened species, section 4(d) of the ESA requires the Secretary to issue such regulations the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under ESA section 9(a)(1). Thus, NMFS has flexibility under ESA section 4(d) to tailor protective regulations, taking into account the effectiveness of available conservation measures. The status review of the Banggai cardinalfish (Conant, 2015), and the Banggai Cardinalfish 5-Year Review (2021) provided extensive information on the status of the Banggai cardinalfish. The information and conclusions from these documents are briefly summarized below.

On April 22, 2021, NMFS received a petition from the Center for Biological Diversity, the Animal Welfare Institute, and the Defenders of Wildlife requesting NMFS promulgate a rule under section 4(d) of the ESA to provide for the conservation of the Banggai cardinalfish. On August 4, 2021, NMFS published in the **Federal Register** a notice of receipt of that petition (86 FR 41935) and requested information and comments for evaluating the request during a 60-day comment period. In addition to comments and information pertaining to any aspect of the petition, we specifically requested information regarding: (1) the adequacy of existing measures regulating the collection and trade of the Banggai cardinalfish throughout its range; (2) the availability and efficacy of captive-bred fish for aquaria trade, both domestic and international; (3) information on the collection/harvest (including, but not limited to, number, location, mortality rate), and trade (import/export data, value, transit mortality rates) of wild fish for aquaria trade; and (4) implementation and efficacy of Indonesia's National Plan of Action (NPOA) (2017–2021) for Banggai cardinalfish and adequacy of enforcement of Banggai cardinalfish

³ ASLRRRA's comment may be reviewed at: <https://www.regulations.gov/document/PHMSA-2016-0015-0016>.

regulations. We received 18,395 comments on that notice, of which 18,391 were from concerned citizens, scientists, and the Center for Biological Diversity, Animal Welfare Institute, and Defenders of Wildlife, in support of promulgating protective regulations. The comments focused on the importance of conserving the species, specifically by prohibiting the importation of Banggai cardinalfish into the United States. The other four comments did not support promulgating protective regulations. Those comments expressed concern regarding the effect applying the prohibitions in section 9 of the ESA to this species would have on the aquaculture production of Banggai cardinalfish and on conservation efforts for this species in Indonesia.

In the case of threatened species, pursuant to ESA section 4(d), the Secretary may by regulation prohibit any act prohibited under ESA section 9(a)(1). Such regulations may include any or all of the prohibitions in section 9(a)(1) that apply to endangered species. Those section 9(a)(1) prohibitions make it unlawful, with limited specified exceptions, for any person subject to the jurisdiction of the United States to: (A) import any such species into, or export any such species from the United States; (B) take any such species within the United States or the territorial sea of the United States; (C) take any such species upon the high seas; (D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C); (E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species; (F) sell or offer for sale in interstate or foreign commerce any such species; or (G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of the ESA and promulgated by the Secretary pursuant to authority provided by the ESA. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or regulations issued under the ESA.

The Banggai cardinalfish is a foreign species and occurs only in areas beyond the U.S. exclusive economic zone and territorial waters. The Banggai cardinalfish is a relatively small marine fish. Adults generally do not exceed 55 to 57 millimeters (mm) standard length (Vagelli, 2011). The species is distinguished by its tasseled first dorsal fin, elongated anal and second dorsal fin rays, and deeply forked caudal fin (Allen, 2000). It is brilliantly colored, with contrasting black and light bars

with whitish spots over a silvery body. The Banggai cardinalfish has an exceptionally restricted natural range limited to 20–34 kilometers² of shallow-water habitat around 34 islands within the Banggai Archipelago, Indonesia. It inhabits a variety of shallow (from about 0.5 to 6 meters) habitats including coral reefs, seagrass beds, and less commonly, open areas of low branching coral and rubble. To avoid predators, it associates with microhabitats, such as sea urchins and anemones (Vagelli, 2011). Banggai cardinalfish are found in waters ranging from 26 to 31 degrees Celsius (°C), but averaging 28 °C (Ndobe *et al.*, 2013).

The Banggai cardinalfish exhibits reversed sex roles, where males provide parental care and brood eggs in their mouths. It lacks a planktonic larval stage and extends the brooding of larvae for about 7 days after hatching, which results in the release of fully formed juveniles. Spawning occurs year-round but peaks around September through October, which is a period of fewer storms in the region (Ndobe *et al.*, 2013). Its lifespan in the wild has been estimated at approximately 2.5–3 years (Vagelli, 2011), with a maximum lifespan up to 3–5 years (Ndobe *et al.*, 2013). Banggai cardinalfish mature at <1 year of age, which corresponds to approximately 40 mm standard length. The number of eggs in an egg mass ranges from 20 to 102 (mean = 59), while the number of eggs brooded ranges from 45 to 99 (mean = 59). High mortality occurs during the first days after release from the brood pouch due to predation, including parental and non-parental cannibalism (Vagelli, 1999).

As a part of the listing process, we concluded that Banggai cardinalfish had experienced a decline in abundance, as evidenced by a decrease in mean density at survey sites between 2004 and 2012. Moreover, some researchers believe that the population may have experienced a dramatic decline from historical abundance due to overharvest based on comparisons between populations in a private bay and other populations (Conant, 2015). Several threats to the Banggai cardinalfish were identified as contributing to this decline, including the degradation of habitat, international trade as a live marine ornamental reef fish, disease linked to high mortality of wild-caught fish imported for the ornamental trade, and inadequate protections in its endemic range. The threat of overharvest was and continues to be a considerable threat to the Banggai cardinalfish for use in the international aquarium trade. According to the best available data, approximately 120,000

Banggai cardinalfish are imported to the United States each year, primarily for use in the aquarium and pet trade. This number is anticipated to remain fairly stable over the foreseeable future. The U.S. Fish and Wildlife Service tracks the importation of wildlife—including Banggai cardinalfish—and their derived products into the U.S. through the Law Enforcement Management Information System (LEMIS) database. While LEMIS data include select records of imports of Banggai cardinalfish declared under the Banggai cardinalfish species code, most imports of the fish are coded under the generic marine ornamental fish species code. As a result, our estimate of average annual imports of Banggai cardinalfish to the U.S. also reflects input from pet industry trade group representatives and academic experts.

On March 29, 2021, NMFS completed a review of the species ESA classification pursuant to section 4(c)(2), also known as a 5-year review, which again concluded that the threatened Banggai cardinalfish is at risk of extinction primarily because its populations have been reduced by anthropogenic stressors that include, but are not limited to: (1) degradation of habitat; (2) international trade as a live marine ornamental reef fish; (3) disease linked to high mortality of wild-caught fish imported for the ornamental trade; and (4) inadequate protections in its endemic range.

The review further concluded that the Banggai cardinalfish is likely to become an endangered species within the foreseeable future and should continue to be classified as a threatened species.

Proposed 4(d) Protective Regulations for the Banggai Cardinalfish

The ESA does not specify particular prohibitions for threatened species. Instead, under section 4(d) of the ESA, the Secretary has discretion to issue such protective regulations as the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary also has the discretion to, by regulation, prohibit with respect to any threatened species of fish or wildlife, any act prohibited under ESA section 9(a)(1). Permits may be issued to allow persons to engage in otherwise prohibited acts for certain purposes.

Under section 4(d) of the ESA, the Secretary may develop specific prohibitions and exceptions tailored to the particular conservation needs of a threatened species. In such cases, the Secretary may issue a 4(d) rule that includes some or all of the prohibitions set out in the ESA. We are exercising

our discretion to propose a 4(d) rule for the Banggai cardinalfish.

Our conservation objective is to prevent further reduction of existing wild populations of Banggai cardinalfish. Therefore, we are proposing to apply to the Banggai cardinalfish the prohibitions in ESA section 9(a)(1)(A). The ESA section 9(a)(1)(A) prohibitions would make it unlawful for any person subject to the jurisdiction of the United States to import the species into or export the species from the United States.

Import and Export

This proposed rule would apply to all commercial and noncommercial international shipments of live and dead Banggai cardinalfish and parts and products, including the import and export of personal pets and research samples. The import and export of wild-caught and captive-bred Banggai cardinalfish into and from the United States and its territories would be prohibited.

We assessed the conservation needs of the Banggai cardinalfish in light of the lack of protections or other regulations of the international trade in this species. The best available commercial data indicate that the legal and illegal trade of Banggai cardinalfish for use in the international aquarium trade is currently a threat to the persistence of the species. The Banggai cardinalfish is a popular marine ornamental fish that has been heavily traded in the aquarium trade since the mid-1990s. The current trade estimates are between 500,000 and 900,000 individuals annually worldwide (Ndobe *et al.*, 2018a; Akmal *et al.*, 2020). Tracking the trade of Banggai cardinalfish is very difficult, as it is not listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which provides a legal framework to regulate the international trade of species listed under CITES, and as such Parties are not required to include trade in this species in their annual report to CITES. However, Banggai cardinalfish was ranked the 10th, 11th, and 8th most imported aquarium fish into the United States in 2008, 2009, and 2011, respectively (Rhyne *et al.*, 2017a), and the current trade estimates remain comparable to the annual numbers noted in the 2015 status review (Conant, 2015). As mentioned previously, LEMIS data only includes select records of imports of Banggai cardinalfish declared under the Banggai cardinalfish species code, and most imports of the fish are coded under the generic marine ornamental fish species code. As a result, our estimate

of average annual imports of Banggai cardinalfish to the U.S. also reflects input from pet industry trade group representatives and academic experts. According to data gathered for the initial regulatory flexibility analysis (IRFA) (described below in the Classification section), there are five or fewer businesses that account for all imports of Banggai cardinalfish into the United States. These businesses import approximately 120,000 Banggai cardinalfish per year.

Interstate Commerce

This rule proposes to prohibit the import into and export from the United States and its territories. No other prohibitions under section 9 of the ESA would be applied. A person would continue to be able to deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase Banggai cardinalfish in interstate commerce. Although we do not have current data, we believe there are a number of Banggai cardinalfish in the United States. However, we have no information to suggest that interstate commerce activities within the United States are associated with threats to Banggai cardinalfish or would negatively affect any efforts aimed at the recovery of wild populations of the species, and therefore we are not proposing to prohibit those activities.

Effects of This Rule

The Banggai cardinalfish is a foreign species and occurs only in areas beyond the U.S. exclusive economic zone and territorial waters. The ESA primarily protects foreign species by restricting trade; under the ESA, certain activities, including import, export, take, commercial activity, interstate commerce, and foreign commerce may be prohibited. This rule proposes to prohibit the import and export of Banggai cardinalfish into and from the United States and its territories. Research and enhancement activities that require import or export authorization will be examined on a case-by-case basis as prescribed by ESA section 10. The effects of such authorizations would be limited, because the general import into and export from the United States and its territories would be prohibited, thereby eliminating international trade of the species into and from the United States and its territories.

Public Comments Solicited

We invite comments and suggestions from all interested parties regarding this proposed rule to issue protective regulations under ESA section 4(d) for

the threatened Banggai cardinalfish (see **ADDRESSES**). Data, information, and comments that are accompanied by supporting documentation such as maps, logbooks, bibliographic references, personal notes, and/or reprints of pertinent publications are helpful and appreciated.

Public Hearing

NMFS will consider holding a public hearing on this proposal, if requested. Requests must be filed by the date specified in the **DATES** section above.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review (Peer Review Bulletin), establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities. The text of the Peer Review Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Peer Review Bulletin requires Federal agencies to subject “influential” scientific information to peer review prior to public dissemination. Influential scientific information is defined as “information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions,” and the Peer Review Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review. The Peer Review Bulletin establishes stricter standards for the peer review of “highly influential” scientific assessments, defined as information whose “dissemination could have a potential impact of more than \$500 million in any 1 year on either the public or private sector or that the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.” We do not consider the scientific information underlying this proposed rule to issue ESA section 4(d) protective regulations to constitute influential scientific information as defined in the Peer Review Bulletin. Therefore, the agency expects the information to be non-controversial and have minimal impacts on important public policies or private sector decisions.

References

A complete list of the references used in this proposed rule is available upon request (see **ADDRESSES**).

Classification

Executive Order (E.O.) 12866—Regulatory Planning and Review

This proposed rule has been determined to be not significant for purposes of E.O. 12866 review. An IRFA has been prepared that considers the economic costs and benefits of this proposed rule to issue ESA section 4(d) protective regulations and alternatives to this rulemaking as required under E.O. 12866. To review this report, see the **ADDRESSES** section above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) was designed to ensure that the government considers the potential for its regulations to unduly inhibit the ability of small entities to compete. The goals of the RFA include increasing the government's awareness of the impact of regulations on small entities and encouraging agencies to exercise flexibility to provide regulatory relief to small entities. When a proposed rule is published for public comment in the **Federal Register**, the RFA requires the agency to prepare and make available for public comment an analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). For this proposed rulemaking, this analysis takes the form of an IRFA, which we prepared in accordance with section 603 of the RFA. We welcome comment on this IRFA, which is summarized below and is available as a supplementary document to this proposed rule.

The proposed rule would prohibit the import and export of Banggai cardinalfish and would, therefore, directly regulate entities that import and sell the fish, as well as any entities that export the fish. The large majority of direct impacts of the proposed rule would be borne by businesses that import and sell the Banggai cardinalfish wholesale. Entities that import and sell Banggai cardinalfish wholesale are classified under the Other Miscellaneous Nondurable Goods Merchant Wholesalers industry of the North American Industry Classification System (NAICS). Direct impacts to these entities would comprise the loss of revenues from the sale of Banggai cardinalfish that would be generated absent the proposed rule.

According to data gathered for the IRFA, five or fewer businesses account for all imports of Banggai cardinalfish. These businesses import approximately 120,000 Banggai cardinalfish per year, and there is no anticipated increase or decrease in the level of imports over the foreseeable future. With an estimated wholesale price of \$11 per Banggai cardinalfish, this proposed rule would result in annualized impacts to all wholesalers of approximately \$1.32 million (in 2022 dollars) in lost revenues, relative to the baseline. According to data provided by industry trade group representatives, between 80 and 90 percent of these impacts are anticipated to be borne by a single entity, whose primary NAICS industry is Other Miscellaneous Nondurable Goods Merchant Wholesalers industry (NAICS Code 424990). For NAICS Code 424990, the Small Business Administration's (SBA's) Table of Small Business Size Standards designates a small business as one which employs 100 or fewer employees. Based on employment estimates for this entity gathered from the Dun and Bradstreet Hoovers database, this entity qualifies as a small business under SBA's small business size standards. The IRFA estimates that revenue generated from sale of the Banggai cardinalfish accounts for just under 6 percent of this company's average annual revenues. It is unknown how many additional importers would be impacted through the loss of the remaining 10–20 percent of annual U.S. wholesale sales of the Banggai cardinalfish and whether any of these businesses are small entities.

While not directly regulated by the proposed action, pet stores and other aquarium industry retailers of the Banggai cardinalfish would also be affected through the loss of revenues generated under the baseline. Entities that sell the fish retail are classified under the Pet and Pet Supplies Retailers NAICS industry. Based on an estimated retail price of approximately \$33 per fish and total annual retail sales of approximately 120,000 fish, the IRFA estimates annualized impacts to these retailers of just under \$4 million (in 2022 dollars). According to data provided by industry trade group representatives, between 80 and 90 percent of these impacts are anticipated to be borne by a single large business in the NAICS Pet and Pet Supplies Retailers industry (NAICS Code 459910). This business has annual sales greater than \$1 billion, which is well above the SBA's small business size standard of \$32 million in annual sales for companies in this industry. Impacts

to this business are estimated to account for less than 0.1 percent of its average annual revenues. It is unknown how many additional retailers would be impacted through the loss of the remaining 10–20 percent of annual U.S. retail sales of the Banggai cardinalfish and whether any of these businesses are small entities.

According to interviews with industry trade group representatives, wholesale and retail sales of the Banggai cardinalfish account for nearly all U.S. trade of the fish. In comparison, import by aquaria and export for commercial or other purposes account for a small fraction of the trade of the species. Data were not available to quantify impacts to entities conducting these activities. The proposed rule would impact entities conducting scientific research on Banggai cardinalfish or other activities that enhance the propagation or survival of the species to the extent that obtaining required ESA section 10 permits would incrementally incur costs to the regulated entities and NMFS, relative to the baseline. However, ESA section 10 permits would only be required for entities conducting research on imported Banggai cardinalfish, and the extent to which current research relies on obtaining imported Banggai cardinalfish, and the resulting extent of potential impacts to the entities conducting such research, is uncertain and cannot be quantified due to the lack of available data.

Under the proposed rule, it is possible that directly regulated importers and indirectly impacted retailers could benefit from increased demand for imported aquarium fish species that represent substitutes for the Banggai cardinalfish. Retailers could also benefit from increased demand for domestically bred Banggai cardinalfish. However, these potential benefits would be indirect and are too uncertain to quantify.

The proposed rule would not duplicate or conflict with any other laws or regulations. Currently, there are no Federal restrictions on importing the Banggai cardinalfish into or exporting the fish from the United States, and Banggai cardinalfish are not listed in any appendices of the CITES.

The RFA requires consideration of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and would minimize significant economic impacts to small entities. We considered the following alternatives when developing this proposed rule.

Alternative 1. No Action Alternative. Under the No Action Alternative, NMFS would not establish ESA section 4(d)

protective regulations (*i.e.*, no change from current management policies). The No Action Alternative represents the regulatory status quo. Without the ESA section 4(d) protective regulations established in this proposed rule, Banggai cardinalfish would remain vulnerable to a range of threats. No incremental impacts would be borne by small (or other) entities, but the Banggai cardinalfish would continue to be at risk of further declines in abundance and increased risk of extinction. Declining abundance of the species in the wild could lead to reduced imports of Banggai cardinalfish into the U.S. and/or higher costs per fish to importers as supply dwindles, which could ultimately negatively affect revenues of small entities that sell the fish wholesale or retail. Moreover, the No Action Alternative would not accomplish the stated objectives of the ESA, because it would not aid in the conservation of the threatened Banggai cardinalfish. Thus, the No Action Alternative is not necessarily a “no cost” alternative for small entities.

Alternative 2. Application of All ESA section 9(a)(1) Prohibitions. Prohibitions under this alternative would include, but not be limited to, the import, export, possession, and sale of Banggai cardinalfish, and the delivery, receiving, carrying, transporting, or shipping of Banggai cardinalfish in interstate or foreign commerce in the course of a commercial activity. Incremental impacts to small entities under Alternative 2 could be substantially greater than those that would occur under Alternative 3, the Proposed Action, in part because of the interstate commerce prohibition, which would significantly constrain the development of wholesale and retail markets for domestically bred Banggai cardinalfish. The IRFA does not seek to quantify impacts under Alternative 2 incremental to those under Alternative 3, the Proposed Alternative for this action (see below), due to significant uncertainty regarding the extent to which a domestic market would develop for domestically bred Banggai cardinalfish under each alternative. Under Alternative 2, entities could apply for ESA section 10 permits for activities that involve the take of the Banggai cardinalfish for scientific purposes or to enhance the propagation or survival of the species. Unlike under Alternative 3, however, an ESA section 10 permit would be required for such activities not only if the Banggai cardinalfish are obtained through foreign commerce, but also if the Banggai cardinalfish are obtained domestically.

Alternative 3. Application of ESA section 9(a)(1)(A) Prohibitions (Proposed Alternative for this Action). Section 9(a)(1)(A) of the ESA would be applied to Banggai cardinalfish, thus prohibiting the species’ import into or export from the United States. This alternative would allow for delivery, receipt, carry, transport, or shipment, and sale or offer for sale of Banggai cardinalfish in interstate commerce. As with Alternative 2, under Alternative 3, import and export of Banggai cardinalfish into and from the United States would be limited solely to research or other activities that enhance the survival of the species pursuant to the requirements of section 10 of the ESA. Unlike under Alternative 2, under Alternative 3, an ESA section 10 permit would not be required for such activities if the Banggai cardinalfish are obtained domestically. Alternative 3 was selected as the Proposed Alternative for this Action because it would promote the survival and recovery of the Banggai cardinalfish, and because this alternative would reduce the economic impacts on entities as compared to the economic impacts of Alternative 2.

E.O. 12988—Civil Justice Reform

We have determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of E.O. 12988. We are proposing protective regulations pursuant to the provisions of ESA section 4(d) and other ESA provisions.

E.O. 13175—Consultation and Coordination With Indian Tribal Governments

The longstanding and distinctive relationship between the Federal and Tribal Governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate Tribal Governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. E.O. 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal

Government in matters affecting tribal interests.

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian Tribal Governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the Tribal Governments. In developing this proposed rule, we found that it would not impose substantial direct compliance costs on the communities of Indian Tribal Governments and thus does not have tribal implications.

E.O. 13132—Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on State and local governments (unless required by statute). Neither of those circumstances is applicable to this proposed rule.

Paperwork Reduction Act

This proposed rule does not contain any new or revised collection of information requirements. This rule, if adopted, would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act (NEPA)

In the case of a species listed as threatened, section 4(d) of the ESA directs that the Secretary of Commerce shall issue such regulations as the Secretary deems necessary and advisable to provide for the conservation of the species. The Secretary may, by regulation, prohibit with respect to any threatened species of fish or wildlife any or all acts prohibited under section 9(a)(1). Accordingly, the promulgation of ESA section 4(d) protective regulations is subject to the requirements of NEPA, and we have prepared a draft EA analyzing the proposed 4(d) regulations and alternatives. We are seeking comment on the draft EA, which is available on the Federal eRulemaking Portal website (<https://www.regulations.gov>) or upon request (see **DATES** and **ADDRESSES**, above).

*E.O. 13211—Energy Supply,
Distribution, or Use*

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to E.O. 13211, “significant energy action” means any action by an agency that is expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. NMFS has determined that the energy effects are unlikely to exceed the energy impact thresholds identified in E.O. 13211 because this proposed rule is not significant under E.O. 12866. Therefore,

no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 223

Endangered and threatened species,
Exports, Imports, Transportation.

Dated: August 9, 2023.

Samuel D. Rauch, III,

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

For the reasons set out in the
preamble, NMFS proposes to amend 50
CFR part 223 as follows:

**PART 223—THREATENED MARINE
AND ANADROMOUS SPECIES**

■ 1. The authority citation for part 223
continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B,
§ 223.201–202 also issued under 16 U.S.C.
1361 *et seq.*; 16 U.S.C. 5503(d) for
§ 223.206(d)(9).

■ 2. In subpart B, add § 223.215 to read
as follows:

§ 223.215 Banggai cardinalfish.

(a) *Prohibitions.* The prohibitions of
section 9(a)(1)(A) of the ESA (16 U.S.C.
1538(a)(1)(A)) relating to endangered
species apply to the threatened Banggai
cardinalfish listed in § 223.102(e).

(b) [Reserved]

[FR Doc. 2023–17492 Filed 8–14–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 156

Tuesday, August 15, 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.

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 September 14, 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: Cooperative Agricultural Pest Survey.

OMB Control Number: 0579–0010.

Summary of Collection: The Plant Protection Act (7 U.S.C. 3301—*et seq.*) authorizes the Secretary of Agriculture, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds. The Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ), along with the States and other agencies, collects and manages data on plant pests, woods, and biological control agents through the Cooperative Agricultural Pest Survey (CAPS). The program allows the States and PPQ to conduct surveys to detect and measure the presence of exotic plant pests and weeds and to input surveillance data into a national computer-based system known as the National Agricultural Plant Information System (NAPIS).

Need and Use of the Information: APHIS collects information using cooperative agreements, pest detection surveys, and a Specimens for Determination form (PPQ Form 391), to predict potential plant pest and noxious weed situations and to promptly detect and respond to the occurrence of new pests and to record the location of those pest incursions that could directly hinder the export of U.S. farm commodities. If the information were not collected, it would seriously impact APHIS' ability to timely assist State personnel, and others involved in agriculture and protection of the environment in order to plan pest control measures, detect new outbreaks, and to determine the threat posed by migratory pests.

Description of Respondents: State, local, or Tribal government.

Number of Respondents: 55.

Frequency of Responses: Reporting; on occasion.

Total Burden Hours: 3,669.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–17484 Filed 8–14–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: **Guiliano Pecci, 6721 SW 69 Terrace, South Miami, FL 33143; Order Denying Export Privileges**

On March 31, 2022, in the U.S. District Court for the Southern District of Florida, Guiliano Pecci (“Pecci”) was convicted of violating 18 U.S.C. 554(a). Specifically, Pecci was convicted of smuggling firearm kits from the United States to Paraguay. As a result of his conviction, the Court sentenced Pecci to 18 months of confinement, three years of supervised release and a \$200 assessment.

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

BIS received notice of Pecci's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”), BIS provided notice and opportunity for Pecci to make a written submission to BIS. 15 CFR 766.25.² BIS has not received a written submission from Pecci.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Pecci's export privileges under the Regulations for a period of seven years from the date of Pecci's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

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

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

Pecci had an interest at the time of his conviction.³

Accordingly, it is hereby *ordered*:

First, from the date of this Order until March 31, 2029, Guiliano Pecci, with a last known address of 6721 SW 69 Terrace, South Miami, FL 33143, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

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

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

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

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

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

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

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

D. Obtain from the Denied Person in the United States any item subject to the

Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

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

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

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

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

Sixth, this Order is effective immediately and shall remain in effect until March 31, 2029.

Jason Seltzer,

Acting Director, Office of Export Enforcement.

[FR Doc. 2023–17503 Filed 8–14–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

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

DATES: Applicable August 15, 2023.

FOR FURTHER INFORMATION CONTACT: Jonathan Hall-Eastman, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of

Commerce, 1401 Constitution Ave. NW, Washington, DC 20230, telephone: (202) 482–1468.

SUPPLEMENTARY INFORMATION: On May 8, 2023, the U.S. Department of Commerce (Commerce), pursuant to section 702(h) of the Trade Agreements Act of 1979 (as amended) (the Act), published the quarterly update to the annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty covering the period October 1, 2022, through December 31, 2022.¹ In the *Fourth Quarter 2022 Update*, we requested that any party that had information on foreign government subsidy programs that benefited articles of cheese subject to an in-quota rate of duty submit such information to Commerce.² We received no comments, information, or requests for consultation from any party.

Pursuant to section 702(h) of the Act, we hereby provide Commerce’s update of subsidies on articles of cheese that were imported during the period January 1, 2023, through March 31, 2023. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

Commerce will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed. Commerce encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing through the Federal eRulemaking Portal at <https://www.regulations.gov>, Docket No. ITA–2020–0005, “Quarterly Update to Cheese Subject to an In-Quota Rate of Duty.” The materials in the docket will not be edited to remove identifying or contact information, and Commerce cautions against including any information in an electronic submission that the submitter does not want publicly disclosed. Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF formats only. All comments should be addressed to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

¹ See *Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty*, 88 FR 29631 (May 8, 2023) (*Fourth Quarter 2022 Update*).

² *Id.*

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

This determination and notice are in accordance with section 702(a) of the Act.

Dated: August 9, 2023.
Lisa W. Wang,
Assistant Secretary for Enforcement and Compliance.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross ³ subsidy (\$/lb)	Net ⁴ subsidy (\$/lb)
27 European Union Member States ⁵	European Union Restitution Payments	0.00	0.00
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Norway	Indirect (Milk) Subsidy <i>Consumer Subsidy</i>	0.00	\$ 0.00
		0.00	0.00
Total		0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[FR Doc. 2023–17452 Filed 8–14–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Third Amended Final Determination of the Results of 2012–2013 Antidumping Administrative Review Pursuant to Court Decision

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

SUMMARY: On July 19, 2023, the U.S. Court of International Trade (CIT or Court) issued its final judgment in *China Manufacturers Alliance, LLC v. United States*, Consol. Court No. 15–00124, Slip Op. 23–105 (CIT 2023) (*China Mfr. Alliance VI*), sustaining the U.S. Department of Commerce's (Commerce) prior remand redeterminations pertaining to the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China) covering the period September 1, 2012, through August 31, 2013, which: (1) effectuated the mandate of the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit) ruling to assign mandatory respondent Double

Coin Holdings Ltd. (Double Coin) the 105.31 percent China-wide rate initially assigned in the final results of this review (overturning the prior final results of redetermination pursuant to the CIT's directive to calculate a rate for Double Coin on the basis of its own information); and (2) sustained the prior final results of redetermination pursuant to remand with respect to mandatory respondent Guizhou Tyre Co., Ltd. and Guizhou Tyre Export and Import Co., Ltd. (collectively GTC). Commerce is notifying the public that it is amending the final results with respect to the dumping margin assigned to Double Coin.

DATES: Applicable July 29, 2023.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn, Program Manager, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5848.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2015, Commerce issued its final results in the fifth administrative review of the antidumping duty order on OTR tires from China.¹ Mandatory respondent Double Coin and its affiliated U.S. importer, China Manufacturers Alliance, LLC, and mandatory respondent GTC timely filed complaints with the Court

challenging certain aspects of Commerce's *Final Results*. Domestic interested parties Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC intervened as defendant-intervenor, but withdrew from these cases on September 29, 2017.

On February 6, 2017, the CIT remanded Commerce's *Final Results*, directing Commerce to: (1) further explain and reconsider the treatment of irrecoverable value-added tax (VAT) in the calculation of the margin for GTC; (2) further explain and reconsider whether certain movement expenses were double-counted in the margin calculation for GTC; (3) reconsider and recalculate warehousing cost surrogate values for GTC to properly adjust for inflation; and (4) assign Double Coin a margin based exclusively on Double Coin's own information, despite Double Coin being found to be part of the non-market economy (NME) entity and assigned the applicable 105.31 percent China-wide entity rate in the *Final Results*.² In its *First Remand Redetermination*, Commerce: (1) continued to reduce GTC's U.S. sales prices to account for irrecoverable VAT; (2) determined that certain, but not all, movement expenses identified by the Court for further consideration were double counted and removed the applicable charges from the international freight surrogate value

³ Defined in 19 U.S.C. 1677(5).

⁴ Defined in 19 U.S.C. 1677(6).

⁵ The 27 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands,

Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 20197 (April 15, 2015) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM); see also *Certain New Pneumatic Off-the-Road Tires from the People's*

Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2012–2013, 80 FR 26230 (May 7, 2015) (*Amended Final Results*) (for ease of reference, collectively referred to herein as *Final Results*).

² See *China Manufacturers Alliance, LLC et al. v. United States*, 205 F. Supp. 3d 1325 (CIT 2017) (*China Mfr. Alliance I*).

calculation for GTC; (3) made an inflation adjustment to domestic warehousing costs to match the surrogate value to the period of review for GTC; and (4) assigned Double Coin a *de minimis* 0.14 percent margin instead of assigning it a 105.31 percent margin as part of the China-wide entity, under respectful protest.³

After issuing its *First Remand Redetermination*, Commerce requested a partial voluntary remand on the issue of Double Coin's margin in light of the Federal Circuit's decision in *Diamond Sawblades*.⁴ On January 16, 2019, the Court sustained, in part, and remanded, in part, Commerce's *First Remand Redetermination* and denied Commerce's motion for partial voluntary remand.⁵ Specifically, the Court sustained Commerce's determinations regarding the inflation adjustment to domestic warehousing costs and double-counting of certain movement expenses for GTC but further remanded the following issues for further reconsideration and recalculation: (1) in denying Commerce's motion for voluntary remand, the CIT found that the only rate supported by the record evidence that Commerce could apply to Double Coin was the 0.14 percent margin applied in the *First Remand Redetermination*; (2) Commerce's finding that certain brokerage and handling and ocean freight charges, other than those corrected in the *First Remand Redetermination*, were not double counted for GTC was unsupported and must be reconsidered; and (3) Commerce's continued reduction of GTC's U.S. sales prices to account for irrecoverable VAT was impermissible, and Commerce must recalculate GTC's margin without making such deductions.⁶ In its *Second Remand Redetermination*, Commerce recalculated GTC's U.S. sale prices without making deductions for irrecoverable VAT, under respectful protest, and adjusted GTC's brokerage and handling and ocean freight costs for certain double-counted expenses.⁷ The

CIT sustained the results of the *Second Remand Redetermination* in *China Mfr. Alliance III*.⁸ In light of these determinations, Commerce issued an amended final determination and notice of court decision not in harmony with the final results of administrative review which, after accounting for all such changes and issues addressed in the remand redeterminations, resulted in a weighted-average dumping margin for GTC of 4.59 percent and assigned Double Coin a *de minimis* margin of 0.14 percent.⁹

Upon appeal, on June 10, 2021, the Federal Circuit issued a decision in *China Manufacturers Alliance, LLC et al. v. United States*, 1 F.4th 1028 (Fed. Cir. 2021) (*China Mfr. Alliance IV*), which reversed and remanded the CIT's prior decision in: (1) *China Mfr. Alliance I*, in which the CIT found that Commerce had to assign mandatory respondent Double Coin a margin based exclusively on Double Coin's own information, despite Double Coin being found to be part of the NME entity and assigned the applicable 105.31 percent China-wide entity rate in the *Final Results* and *Amended Final Results*, as well as; (2) the CIT's decision in *China Mfr. Alliance II* to deny Commerce's request for a motion for a partial remand to revisit the issue of the margin calculated for Double Coin in light of the Federal Circuit's decision regarding the China-wide entity in *Diamond Sawblades*, which specifically identified the *China Mfr. Alliance I* decision as incompatible with the practice of applying the NME presumption to companies which fail to rebut the presumption of government control.¹⁰ As a result, on May 16, 2023, the CIT issued a remand order directing Commerce to reach a new determination effectuating the mandate of the Federal Circuit's *China Mfr. Alliance IV* ruling by assigning Double Coin the 105.31 percent China-wide rate.¹¹ In compliance with the Federal Circuit's determination in *China Mfr. Alliance IV* and the CIT's directive to effectuate that

determination in *China Mfr. Alliance V*, on June 12, 2023, Commerce issued its *Third Remand Redetermination* assigning the China-wide rate of 105.31 percent as the final dumping margin applicable to Double Coin.¹² On July 19, 2023, the CIT entered final judgement in the litigation of the proceeding, sustaining the results of the *Third Remand Redetermination*.¹³

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to mandatory respondent Double Coin as follows:

Exporter	Weighted-average dumping margin (percent)
Double Coin Holdings Ltd	105.31

Cash Deposit Requirements

Because the antidumping duty order on OTR Tires from China was revoked,¹⁴ Commerce will not issue cash deposit instructions as a result of this Court decision.

¹² See *Final Results of Redetermination Pursuant to Court Remand, China Manufacturing Alliance, LLC, et al. v. United States*, Court No. 15–00124, Slip Op. 23–75 (CIT 2023), dated June 12, 2023 (*Third Remand Redetermination*), available at <https://access.trade.gov/resources/remands/23-75.pdf>.

¹³ See *China Mfr. Alliance VI*. All issues otherwise raised in litigation and applicable to GTC were resolved in prior remand segments. Specifically, in *China Mfr. Alliance III*, the CIT sustained: (1) Commerce's determination in the *First Remand Redetermination*, to recalculate warehousing expenses for GTC, to account for an inflation adjustment, and to exclude certain charges from the calculation of the ocean freight surrogate value, on the basis that both recalculations were consistent with the *China Mfr. Alliance I* and were unchallenged in subsequent litigation; and (2) Commerce's determination in the *Second Remand Redetermination* to recalculate export price and constructed export price for GTC without making deductions for irrecoverable value added taxes and adjustment to GTC's brokerage and handling and ocean freight costs for certain double-counted expenses. Thus, the Federal Circuit's decision in *China Mfr. Alliance IV* (and subsequent *China Mfr. Alliance V*, *Third Remand Redetermination*, and *China Mfr. Alliance VI*) reverse the CIT's prior determination only with respect to the appropriate rate applied to Double Coin, but does not reverse the CIT's final judgment in *China Mfr. Alliance III* sustaining the changes to GTC's margin calculation reflected in the *First Remand Redetermination* and *Second Remand Redeterminations*. Thus, GTC's final margin calculation of 4.59 percent, as reflected in the prior *Second Amended Final* and *Timken Notice*, remains unchanged.

¹⁴ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty and Countervailing Duty Orders*, 84 FR 20616 (May 10, 2019).

³ See *Final Results of Redetermination Pursuant to Court Remand, China Manufacturing Alliance, LLC, et al. v. United States*, Court No. 15–00124, Slip Op. 17–12 (CIT 2017), dated June 21, 2017 (*First Remand Redetermination*), available at <https://access.trade.gov/resources/remands/17-12.pdf>.

⁴ See *Diamond Sawblades Mfrs. Coal. v. United States*, 866 F.3d 1304 (Fed. Cir. 2017) (*Diamond Sawblades*).

⁵ See *China Manufacturers Alliance, LLC et al. v. United States*, 357 F. Supp. 3d 1364 (CIT 2019) (*China Mfr. Alliance II*).

⁶ *Id.*

⁷ See *Final Results of Redetermination Pursuant to Court Remand, China Manufacturing Alliance,*

LLC, et al. v. United States, Court No. 15–00124, Slip Op. 19–7 (CIT 2019), dated April 16, 2019 (*Second Remand Redetermination*), available at <https://access.trade.gov/resources/remands/19-7.pdf>; see also *China Mfr. Alliance III*; and *Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review*, 84 FR 55553 (October 17, 2019) (*Second Amended Final and Timken Notice*).

⁸ See *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15–00124; Slip Op. 19–115 (CIT 2019) (*China Mfr. Alliance III*).

⁹ See *Second Amended Final and Timken Notice*.

¹⁰ See *China Mfr. Alliance IV*.

¹¹ See *China Manufacturers Alliance, LLC et al. v. United States*, Consol. Court No. 15–00124, Slip Op 23–75 (CIT 2023) (*China Mfr. Alliance V*).

Liquidation of Suspended Entries

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct U.S. Customs and Border Protection to assess antidumping duties on unliquidated entries of subject merchandise exported by Double Coin in accordance with 19 CFR 351.212(b) at the rate listed above.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: August 9, 2023.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2023-17473 Filed 8-14-23; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF EDUCATION

Meeting; National Advisory Council on Indian Education (NACIE)

AGENCY: National Advisory Council on Indian Education (NACIE), Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and instructions to access or participate in the August 29–30, 2023, virtual meeting of NACIE. This notice provides information about the meeting to members of the public who may be interested in attending the meeting and how to provide written comment for the meeting.

DATES: The NACIE open virtual meeting will be held on August 29–30, 2023, from 1:00–4:30 p.m. (EDT).

FOR FURTHER INFORMATION CONTACT: Crystal C. Moore, Designated Federal Official, Office of Elementary and Secondary Education (OESE)/Office of Indian Education (OIE), U.S. Department of Education, 400 Maryland Avenue SW, Office 3W243, Washington, DC 20202. Telephone: 202-453-5593, Email: Crystal.Moore@ed.gov.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees). NACIE is authorized by section 6141 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 7471). The work of NACIE was expanded by Executive Order 14049. In accordance with section 6141 of the ESEA, NACIE shall advise the Secretary of Education and the Secretary of Interior on the funding and

administration (including the development of regulations and administrative policies and practices) of any program, including any program established under title VI, Part A of the ESEA, with respect to which the Secretary of Education has jurisdiction and (1) that includes Indian children or adults as participants or (2) that may benefit Indian children or adults. Also in accordance with section 6141 of the ESEA, NACIE shall make recommendations to the Secretary of Education for filling the position of Director of Indian Education whenever a vacancy occurs and shall submit to the Congress, no later than June 30 of each year, a report on its activities that includes recommendations that are considered appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program. In accordance with section 3 of Executive Order 14049, NACIE shall advise the Co-Chairs of the White House Initiative on Advancing Educational Equity, Excellence and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities (WHI-NATCU), in consultation with the WHI-NATCU, on (1) what is needed for the development, implementation, and coordination of educational programs and initiatives to improve educational opportunities and outcomes for Native Americans, (2) how to promote career pathways for in-demand jobs for Native American students, including registered apprenticeships as well as internships, fellowships, mentorships, and work-based learning initiatives, (3) ways to strengthen Tribal Colleges and Universities and increase their participation in agency programs, (4) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Native American students face and the causes of these challenges and disparities, (5) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the policy set forth in Section 1 of Executive Order 14049, consistent with applicable law, and (6) actions for promoting, improving, and expanding educational opportunities for Native languages, traditions, and practices to be sustained through culturally responsive education. Also, in accordance with section 3 of Executive Order 14049, NACIE and the Executive Director of the

WHI-NATCU (Executive Director) shall, as appropriate and consistent with applicable law, facilitate frequent collaborations between the WHI-NATCU and Tribal Nations, Alaska Native Entities, and other Tribal organizations. Finally, in accordance with section 3 of Executive Order 14049, NACIE shall consult with the Executive Director so that the Executive Director can address NACIE's efforts pursuant to section 3(a) of Executive Order 14019 in the annual report of the WHI-NATCU submitted to the President.

Meeting Agenda: The purpose of this meeting is to convene NACIE and conduct the following business: FY24: Calendar, Annual Report to Congress, and Activity Planning; Collaborative NACIE-Related Organization Chart Discussion, Federal Stakeholder Updates, Bylaws Update, Open Public Comment; and discussion with other federal stakeholders, *e.g.*, U.S. Department of the Interior, Bureau of Indian Education (BIE), WHI-NATCU, U.S. Department of Labor, and U.S. Department of Education, Office of Indian Education.

Instructions for Accessing the Meeting: Members of the public may access the NACIE meeting via virtual teleconference. Up to 350 lines will be available on a first come, first serve basis for those who wish to join via teleconference. The dial-in listen only phone number for the meeting is: 1-669-254-5252 and, Meeting ID: is: 161 715 5166. The web link to register to access the meeting via Zoom.gov is: https://www.zoomgov.com/meeting/register/vJltce6gpjsvHQ8KGik8VaRXX-f9_xji86U.

Public Comment: Members of the public interested in submitting written comments may do so via email to Crystal Moore at Crystal.Moore@ed.gov by 11:59 p.m. Eastern Time (ET) on August 29, 2023. Please note written comments should pertain to the work of NACIE. Open comments during the open comment (only): (1) are also required to be directly pertinent to NACIE's purview, (2) will be accepted on a first requested—first served basis during the live meeting, and (3) each commenter will have a maximum of two minutes to state his or her comment and/or question.

Reasonable Accommodations: The virtual meeting is accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice no later than August 22, 2023. Although we will

attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Access to Records of the Meeting: The Department will post the official minutes of this meeting on the OESE website, <https://oese.ed.gov/offices/office-of-indian-education/national-advisory-council-on-indian-education-oie/>, 21 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may also inspect NACIE records at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, Monday–Friday, 8:30 a.m. to 5:00 p.m. ET. Please email Crystal Moore at Crystal.Moore@ed.gov to schedule an appointment.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. 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 Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may 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.

Authority: § 6141 of the ESEA, as amended (20 U.S.C. 7471).

Adam Schott,

Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary Office of Elementary and Secondary Education.

[FR Doc. 2023–17437 Filed 8–14–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15006–001]

Owyhee Energy Storage, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of ILP Pre-Filing Process and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for an Original License, Commencing Pre-filing Process, and Denial of Request to Use the Traditional Licensing Process.

b. *Project No.:* 15006–001.

c. *Dated Filed:* April 14, 2023.

d. *Submitted By:* Owyhee Energy Storage, LLC (OES).

e. *Name of Project:* Owyhee Pumped Storage Project (Owyhee Project)

f. *Location:* On the northeast side of U.S. Bureau of Reclamation's (Reclamation) Owyhee Reservoir on the Owyhee River approximately 10 miles southwest of Adrian in Malheur County, Oregon. The project would be located on Federal lands owned and/or administered by Reclamation and Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's regulations.

h. *Applicant Contact:* Mr. Matthew Shapiro, rPlus Hydro LLLP, 800 West Main Street, Suite 640, Boise, Idaho 83702; phone: (208) 246–9925.

i. *FERC Contact:* John Matkowski, (202) 502–8576, john.matkowski@ferc.gov.

j. OES filed its Pre-Application Document (PAD) and request to use the Traditional Licensing Process (TLP) on April 14, 2023. OES published public notice of its Notice of Intent to file a license application, PAD, and request to use the TLP on the same day. After reviewing comments submitted by stakeholders, Commission staff denied OES's request to use the TLP on June 13, 2023. OES must use the Integrated Licensing Process to prepare a license application for the Owyhee Project.

k. *Cooperating agencies:* Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in

the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

l. With this notice, we are initiating informal consultation with: (a) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the Oregon State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

m. With this notice, we are designating OES as the Commission's non-Federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act.

n. A copy of the PAD is available for review on the Commission's website (<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 at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy of the PAD is also available for public inspection during normal business hours at the office of rPlus Hydro, 800 W. Main Street, Suite 640, Boise, Idaho 83702.

You may register online at <https://ferconline.ferc.gov/FEROnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595, or at OPP@ferc.gov.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from

Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file documents using the Commission's eFiling system at <https://ferconline.ferc.gov/ferconline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Owyhee Pumped Storage Project (P-15006-001).

All filings with the Commission must bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 7, 2023.

p. Scoping Process

In accordance with the National Environmental Policy Act (NEPA), Commission staff will prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the "NEPA document"). The NEPA document will consider both site-specific and cumulative environmental effects, and reasonable alternatives to the proposed action. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an EA or EIS.

Scoping Meetings

Commission staff will hold two public scoping meetings to receive input on the scope of the environmental issues that should be analyzed in the NEPA document. The daytime scoping

meeting will focus on resource agency, Native American Tribes, and non-governmental organization (NGO) concerns, while the evening scoping meeting will focus on receiving input from the public. We invite all interested agencies, Native American Tribes, NGOs, and individuals to attend one of these meetings to assist us in identifying the scope of environmental issues that should be analyzed in the NEPA document. The dates, times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, September 6, 2023
Time: 2:00 p.m.–4:00 p.m. Mountain Daylight Time (MDT)
Place: Holiday Inn Express & Suites—Ontario Meeting Room
Address: 212 SE 10th St, Ontario, OR 97914

Evening Scoping Meeting

Date: Wednesday, September 6, 2023
Time: 6:00 p.m.–8:00 p.m. MDT
Place: Holiday Inn Express & Suites—Ontario Meeting Room
Address: 212 SE 10th St, Ontario, OR 97914

Copies of SD1, outlining the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and OES's PAD distribution list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, based on the scoping process.

Environmental Site Reviews

The applicant and Commission staff will conduct an environmental site review of the proposed project. All interested agencies, Native American Tribes, NGOs, and individuals are invited to attend. All participants are responsible for their own transportation and must wear closed-toe shoes/boots for walking in uneven/sloped terrain around the proposed project area. If you plan to attend the environmental site review, please contact Matthew Shapiro with rPlus Hydro at (208) 246-9925, or via email at mshapiro@rplusenergies.com, on or before August 25, 2023. If calling to RSVP, stakeholders should provide their name, phone number, and an email address. The time and location of the environmental site review is as follows:

Owyhee Project On-Site Environmental Site Review

Date: Thursday, September 7, 2023

Time: 9:30 a.m. to 2:30 p.m. (MDT)

Place: The location to meet for the Environmental Site Review will be provided to those that RSVP

Meeting Objectives

At the scoping meetings, Commission staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and Tribal permitting and certification processes; and (5) discuss the potential of any Federal or State agency or Native American Tribe to act as a cooperating agency for development of an environmental document. Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this document.

Meeting Procedures

The scoping meetings will be recorded by a court reporter, and all statements will become part of the Commission's public record for the project.

Agencies, Native American Tribes, NGOs, and individuals with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: August 8, 2023.

Kimberly D. Bose,
 Secretary.

[FR Doc. 2023-17478 Filed 8-14-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-57-000]

Texas Eastern Transmission, LP; Notice of Availability of the Environmental Assessment for the Proposed Grand Chenier Compressor Station Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or

Commission) has prepared an environmental assessment (EA) for the Grand Chenier Compressor Station Abandonment Project (Project), proposed by Texas Eastern Transmission, LP (Texas Eastern) in the above-referenced docket. Texas Eastern requests authorization from the Commission to abandon by removal, its existing Grand Chenier Compressor Station in Cameron Parish, Louisiana. Texas Eastern would disconnect and remove aboveground structures and associated appurtenances along with all piping and other buried structures to a depth of two feet below grade. Texas Eastern's Line 41 and associated mainline valve would remain in-service.

The EA assesses the potential environmental effects of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission mailed a copy of the Notice of Availability of the EA to federal, state, and local government representatives and agencies; elected officials; non-governmental organizations, environmental, and public interest groups; potentially interested Indian tribes; affected landowners; and newspapers and libraries in the Project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the natural gas environmental documents page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://elibrary.ferc.gov/eLibrary/search>), select "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.* CP23-57). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential

environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure consideration of your comments on the proposal, it is important that the Commission receive your comments in on or before 5:00 p.m. Eastern Time on September 7, 2023.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You must select the type of filing you are making. If you are filing a comment on a particular project, please select "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23-57) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and

(d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at <https://www.ferc.gov/how-intervene>.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Dated: August 8, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023-17476 Filed 8-14-23; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23-375-000]

Elba Liquefaction Company, LLC and Southern LNG Company, LLC; Notice of Schedule for the Preparation of an Environmental Assessment for the Proposed Elba Liquefaction Optimization Project

On April 28, 2023, Elba Liquefaction Company, LLC and Southern LNG Company, LLC (Companies) filed an application in Docket No. CP23-375-000 requesting an Authorization pursuant to section 3 of the Natural Gas Act to amend existing authorizations

under CP14–103–000, originally approved by the Commission on June 1, 2016.¹ The proposed project is known as the Elba Liquefaction Optimization Project (Project), and would involve new installations and modifications to existing liquefaction facilities at Southern LNG Company, LLC's existing liquefied natural gas (LNG) terminal in Chatham County, Georgia.

On May 10, 2023, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.²

Schedule for Environmental Review

Issuance of EA—March 8, 2024
90-day Federal Authorization Decision
Deadline³—June 6, 2024

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Companies propose to amend its June 1, 2016 Order (2016 Order) to modify certain Movable Modular Liquefaction System (MMLS) Dehydration and Heavies Removal units that would reduce the fouling rate in the liquefaction units, reduce the resultant flaring events associated with cold box deriming, and therefore allow the MMLS to operate in an optimized condition for longer periods of time without fouling within the existing Elba Island LNG terminal in Chatham County, Georgia. Specifically, the Companies would make modifications to ten MMLS units; construct and operate a new condensate plant; install three new liquid nitrogen vaporizers;

and increase the total liquefaction capacity of the MMLS units up approximately 0.4 million tonnes per annum (MTPA) from 2.5 to 2.9 MTPA.

Background

On June 9, 2023, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Elba Liquefaction Optimization Project* (Notice of Scoping). The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from the National Park Service and the U.S. Fish and Wildlife Service, citing concerns regarding impacts to noise sensitive areas, cultural landscapes, and endangered species from additional facility lighting and increased noise.

All substantive comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (www.ferc.gov). Using the “eLibrary” link, select “General Search” from the eLibrary menu, enter the selected date range and “Docket Number” excluding the last three digits (*i.e.*, CP23–375), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached

at (866) 208–3676, TTY (202) 502–8659, or at FERCOnlineSupport@ferc.gov. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: August 9, 2023.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–17468 Filed 8–14–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–513–000]

Port Arthur Pipeline, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Louisiana Connector Pipeline Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Louisiana Connector Pipeline Amendment, which involves 38 modifications to the previously authorized pipeline alignment, construction footprint, and installation methods for the Louisiana Connector Project, which was approved by the Commission on April 18, 2019, in docket no. CP18–7–000. *Please note that the previously approved Louisiana Connector Project is not under re-consideration in this amendment.* The Commission will use the environmental document referred to in this notice in its decision-making process to determine whether the 38 modifications proposed in the amendment are in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the

¹ Elba Liquefaction Company, L.L.C., 155 FERC ¶ 61,219, (2016).

² 40 CFR 1501.10 (2020).

³ The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on September 8, 2023. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts specifically related to the modifications proposed in the amendment, which are detailed further below. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed amendment and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a Port Arthur Pipeline, LLC (PAPL) representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed amended facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project amendment, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

PAPL provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On

My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP23-513-000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Summary of the Proposed Amendment

The proposed amended facilities are specific to 38 locations in Jefferson County, Texas and Cameron, Calcasieu, Beauregard, and Allen Parishes, Louisiana (between milepost 0 in Jefferson County, Texas and milepost 82.5 south of Reeves in Allen Parish, Louisiana), as detailed below:

- modifications to pipeline routes, construction methods, horizontal directional drill (HDD) entry points, and additional temporary workspaces to accommodate landowner requests, to reduce environmental impacts, to avoid newly identified non-PAPL pipelines, to avoid new structures, or to allow for safer construction access;
- shifting of pipeline easements to allow the permanent easements to abut other existing permanent easements;
- addition and modification of access roads for geotechnical boring access and/or to allow better and safer access to the HDD drill pad for construction and HDD inspection;
- modification of equipment and material storage areas and staging areas to utilize areas that were recently and permanently impacted by other parties;
- modification to water approaches to use existing boat ramp/dock improvements;
- relocation of mainline valves to reduce the amount of permanent right-of-way needed, to facilitate operations and maintenance, to provide for safer access via road, and to allow access to power and communications to comply with new and anticipated U.S. Department of Transportation/Pipeline and Hazardous Materials Safety Administration requirements;
- modification of three waterbody crossings methodologies from open cut to an HDD as requested by the U.S. Army Corps of Engineers;
- combine, in two locations, multiple HDDs into a single HDD which would result in avoiding an open-cut crossing and eliminating an HDD; and

- modification of HDD alignments to avoid conflicts with potential future deeper canal depths.

The general location of the project amendment facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the amended facilities would result in a net increase of approximately 20.9 acres of land as compared to what was previously authorized (total of 2,827.9 acres of land, as compared to 2,807.0 acres). This net increase would be attributable to the temporary workspace increases in open water and industrial/commercial areas (31.3 acres and 17.6 acres, respectively), while being reduced in residential and natural areas (*i.e.*, wetlands, forests, and other open land) by 28.1 acres. Wetland impacts would be reduced by 10.9 acres.

Operation of the modified facilities would permanently impact 20.8 acres less land (750.2 acres, as compared to 771.0 acres), most of which is accounted for in the removal of permanent access roads.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the 38 modifications proposed in the amendment under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed amendment or portions of the amendment and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and

discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an environmental assessment (EA) or an environmental impact statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project amendment. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project amendment to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the Louisiana State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and

the public on the project's potential effects on historic properties.⁴ The environmental document for this project amendment will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all landowners affected by the 38 proposed modifications (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project amendment and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed amendment.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP23-513-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project amendment is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on “General Search” and enter the docket number in the “Docket Number” field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866)

208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Any public sessions or site visits will be posted on the Commission’s calendar

located at <https://www.ferc.gov/news-events/events> along with other related information.

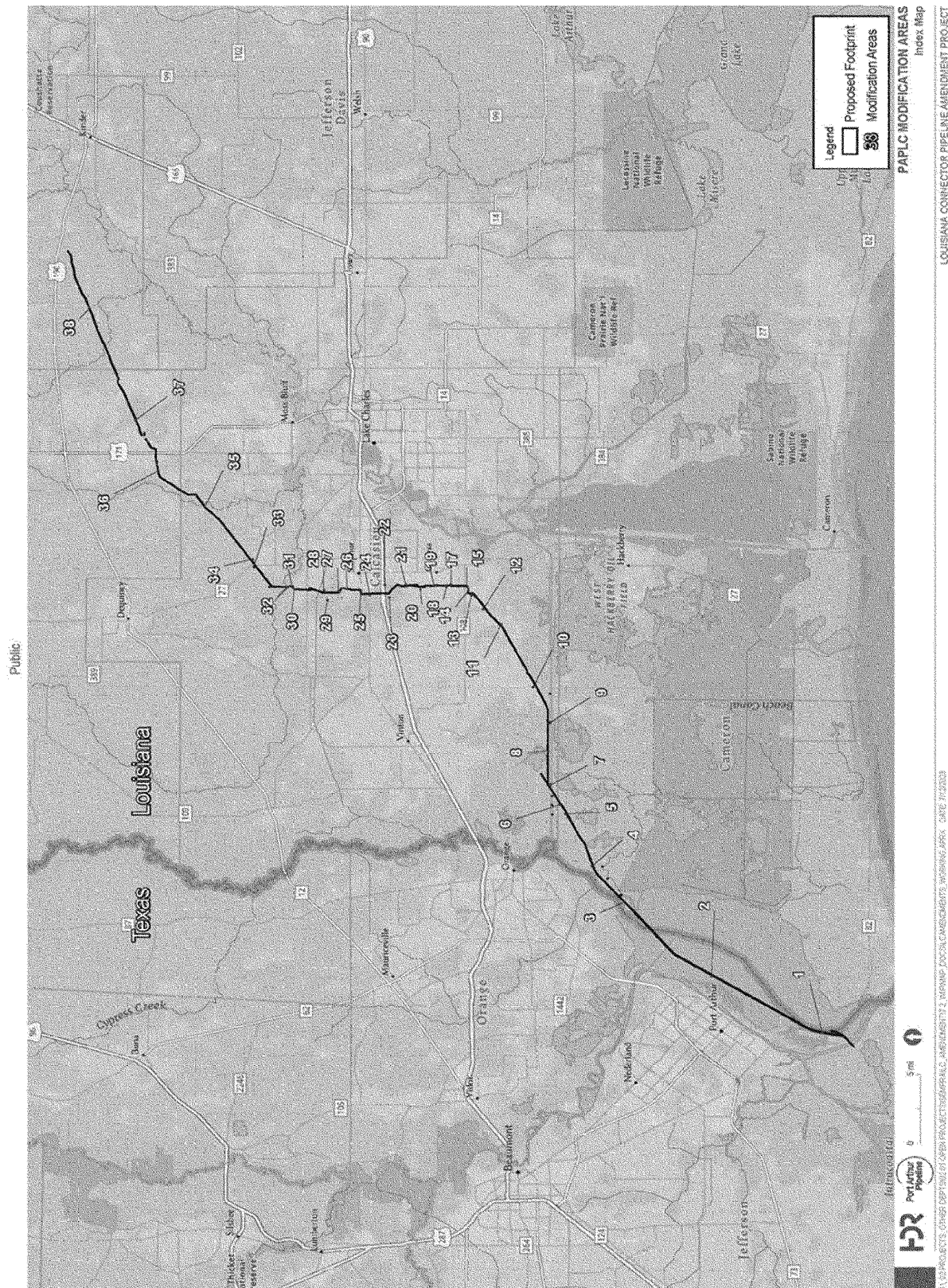
Dated: August 9, 2023.

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Appendix 1



Appendix 2

MAILING LIST UPDATE FORM

Louisiana Connector Pipeline Amendment

Name _____

Agency _____

Address _____

City _____ State _____ Zip Code _____

- ☐ Please update the mailing list
- ☐ Please remove my name from the mailing list

FROM _____

ATTN: OEP - Gas 4, PJ - 11.4
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(CP23-513-000, Louisiana Connector Pipeline Amendment)

Staple or Tape Here

[FR Doc. 2023-17469 Filed 8-14-23; 8:45 am]

BILLING CODE 6717-01-C

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23-961-000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing:
 Negotiated Rate Agreement—8/9/2023 to be effective 8/9/2023.

Filed Date: 8/9/23.
Accession Number: 20230809-5012.
Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: RP23-962-000.
Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Compliance filing:
 Penalties Assessed Compliance Filing 2023 to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5028.
Comment Date: 5 p.m. ET 8/21/23.

Docket Numbers: RP23-963-000.
Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing:
 Negotiated Rate Agreement Update (Pioneer Aug–Oct 2023) to be effective 8/10/2023.

Filed Date: 8/9/23.
Accession Number: 20230809-5048.
Comment Date: 5 p.m. ET 8/21/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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.

For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-

8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023-17470 Filed 8-14-23; 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 rate filings:

Docket Numbers: ER19-2150-002.
Applicants: Shawville Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5104.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2151-002.
Applicants: New Castle Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5090.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2152-002.
Applicants: Brunot Island Power, LLC.

Description: Compliance filing:
 Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5075.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2153-002.
Applicants: Gilbert Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5079.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2154-002.
Applicants: Sayreville Power, LLC.
Description: Compliance filing:
 Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5096.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2155-002.
Applicants: Portland Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5095.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2156-002.
Applicants: Warren Generation, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5116.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2157-002.
Applicants: Mountain Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5086.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2158-002.
Applicants: Orrtanna Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5092.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2159-002.
Applicants: Shawnee Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5102.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2160-002.
Applicants: Titus Power, LLC.
Description: Compliance filing:

Informational Filing Regarding
 Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.
Accession Number: 20230809-5109.
Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19-2161-002.
Applicants: Hamilton Power, LLC.
Description: Compliance filing:

Informational Filing Regarding

Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.

Accession Number: 20230809–5080.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19–2162–002.

Applicants: Blossburg Power, LLC.

Description: Compliance filing:

Informational Filing Regarding

Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.

Accession Number: 20230809–5118.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19–2163–002.

Applicants: Hunterstown Power, LLC.

Description: Compliance filing:

Informational Filing Regarding

Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.

Accession Number: 20230809–5082.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER19–2164–002.

Applicants: Tolna Power, LLC.

Description: Compliance filing:

Informational Filing Regarding

Upstream Transfer of Ownership to be effective N/A.

Filed Date: 8/9/23.

Accession Number: 20230809–5110.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–1123–002.

Applicants: Portland General Electric Company.

Description: Compliance filing:

Compliance Filing Revising PGE OATT Attachment P to be effective 4/16/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5050.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–1372–002.

Applicants: Gaucho Solar LLC.

Description: Tariff Amendment:

Response to Deficiency Letter to be effective 5/1/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5132.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2138–001.

Applicants: Midcontinent

Independent System Operator, Inc., Ameren Illinois Company.

Description: Tariff Amendment:

Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b); 2023–08–09 SA 4085 Ameren IL–SIPC Interconnection Agreement to be effective 12/31/9998.

Filed Date: 8/9/23.

Accession Number: 20230809–5067.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2585–000.

Applicants: American Transmission Company LLC.

Description: Request for

Authorization for Abandoned Plant

Incentive Rate Treatment of American Transmission Company LLC.

Filed Date: 8/8/23.

Accession Number: 20230808–5127.

Comment Date: 5 p.m. ET 8/29/23.

Docket Numbers: ER23–2586–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing:

Original ISA, Service Agreement No. 7013; Queue No. AD2–179 to be effective 7/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5018.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2587–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing:

Original ISA, SA No. 7015; Queue No. AD2–077 to be effective 7/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5022.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2588–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing:

2023–08–09 SA 3150 CMS Energy Resource–MERC 1st Rev GIA (J571) to be effective 8/3/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5051.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2589–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing:

Original ISA, SA No. 7017; Queue No. NQ–187 to be effective 7/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5054.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2590–000.

Applicants: Grover Hill Wind, LLC.

Description: Baseline eTariff Filing:

Grover Hill Wind MBR Application Filing to be effective 10/9/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5057.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2591–000.

Applicants: Capitol District Energy

Center Cogeneration Associates.

Description: Tariff Amendment:

Notice of Cancellation of Market-Based Rate Tariff to be effective 8/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5058.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2592–000.

Applicants: Public Service Company of New Mexico.

Description: § 205(d) Rate Filing:

Transmission Construction and Interconnection Agreement with GridLiance to be effective 7/12/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5062.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2593–000.

Applicants: Alabama Power

Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing:

Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Duke Energy Renewables Solar (Durant Solar) LGIA Filing to be effective 7/28/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5063.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2594–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing:

Original ISA, Service Agreement No. 7027; Queue No. AF1–321/AF2–001/AF2–002 to be effective 7/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5085.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2595–000.

Applicants: Stony Creek Wind Farm, LLC.

Description: Compliance filing:

Informational Filing Regarding Upstream Change In Control to be effective N/A.

Filed Date: 8/9/23.

Accession Number: 20230809–5089.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2597–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing:

Original ISA, Service Agreement No. 7029; Queue No. AD2–047 to be effective 7/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5105.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2598–000.

Applicants: Cleco Power LLC.

Description: Compliance filing:

Compliance Filing Related to Docket No. ER23–1981–000 to be effective 8/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5115.

Comment Date: 5 p.m. ET 8/30/23.

Docket Numbers: ER23–2599–000.

Applicants: Louisiana Generating LLC.

Description: Compliance filing:

Compliance Filing Related to Docket No. ER23–1981–000 to be effective 8/10/2023.

Filed Date: 8/9/23.

Accession Number: 20230809–5117.

Comment Date: 5 p.m. ET 8/30/23.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–66–000.

Applicants: Interstate Power and Light Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Interstate Power and Light Company.

Filed Date: 8/7/23.

Accession Number: 20230807–5196.

Comment Date: 5 p.m. ET 8/28/23.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF23–284–000.

Applicants: WED Coventry Five, LLC.

Description: Revised Refund Report of WED Coventry Five, LLC.

Filed Date: 8/8/23.

Accession Number: 20230808–5129.

Comment Date: 5 p.m. ET 8/29/23.

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, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Kimberly D. Bose,
Secretary.

[FR Doc. 2023–17471 Filed 8–14–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0691; FRL–11139–01–OAR]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Implementation of the Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Implementation of the Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (Renewal) (EPA ICR Number 2258.06; OMB Control Number 2060–0611) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2024. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before October 16, 2023.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–069, to the EPA online using <https://www.regulations.gov> (our preferred method), by email to a-and-r-docket@epa.gov, 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.

FOR FURTHER INFORMATION CONTACT: Ms. Leigh Herrington, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mailcode C539–01, Post Office Box 12055, Research Triangle Park, NC 27711; telephone number: 919–541–0882; fax number: (919) 541–2225; email address: herrington.leigh@epa.gov.

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through January 31, 2024. 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.

This notice allows 60 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 <https://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 <https://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), the EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The PM_{2.5} NAAQS State Implementation Plan (SIP) Requirements Rule (PM_{2.5} SIP Requirements Rule) was effective on October 24, 2016 (81 FR 58010, August 24, 2016). This rule provides the framework of Clean Air Act (CAA) requirements for air agencies to develop state implementation plans to attain and maintain the PM_{2.5} NAAQS. States have applied this framework to develop attainment plans and redesignation requests and maintenance plans for areas designated nonattainment for the 1997 PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, and the 2012 PM_{2.5} NAAQS. This proposed ICR renewal covers the

period February 1, 2024–January 31, 2027.

The initial ICR finalized with the PM_{2.5} NAAQS SIP Requirements Rule estimated, for the 3 years following the ICR approval date, the burden associated with plan development and plan revisions related to ongoing implementation efforts in 31 areas designated nonattainment for the 1997, 2006 and/or 2012 PM_{2.5} NAAQS. The estimates included the burden to develop and submit, and the burden to the EPA to review and to approve or disapprove, attainment plans to meet the requirements prescribed in CAA sections 110 and part D, subparts 1 and 4 of title I. A PM_{2.5} NAAQS attainment plan contains rules and other measures designed to improve air quality and achieve the NAAQS by the deadlines established under the CAA. It also must address several additional CAA requirements related to demonstrating timely attainment and must contain contingency measures in the event the nonattainment area does not achieve reasonable further progress throughout the attainment period or in the event the area does not attain the NAAQS by its attainment date. States that have attained by the applicable attainment date may be eligible to submit a redesignation request and maintenance plan to receive a redesignation from “nonattainment” to “attainment.” After a state submits an attainment or maintenance plan, the CAA requires the EPA to take action on the plan. Tribes located within the geographic boundary of a nonattainment area may develop or submit attainment plans, but they are not required to do so.

This ICR supersedes the existing ICR—for which the EPA is proposing renewal in this action—for purposes of PM_{2.5} NAAQS implementation.

Form Numbers: None.

Respondents/affected entities: State and local governments.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 12.

Frequency of response: Once per triggering event [i.e., an air agency is required to revise and submit a SIP revision when the area is initially designated as nonattainment, reclassified to a higher classification, when an area fails to achieve reasonable further progress, when a Serious nonattainment area fails to timely attain, and/or when a state requests redesignation for a PM_{2.5} nonattainment area that attains the NAAQS]].

Total estimated burden: 24,900 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: \$1.76M (present value per year), which includes \$0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 1800 hours of total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the reduction in nonattainment areas from 18 to 12. While the hours decreased due to the fewer number of respondents, there is a present-day value increase in estimated costs due to the increase in labor rates and the need for several areas to continue to develop plans to help address complex air quality issues.

Scott Mathias,

Director, Air Quality Policy Division.

[FR Doc. 2023–17466 Filed 8–14–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0161; FR ID 162287]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before September 14, 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 Cathy Williams, FCC, via email to PRA@fcc.gov and to Cathy.Williams@fcc.gov. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further

reduce the information collection burden for small business concerns with fewer than 25 employees.”

OMB Control Number: 3060–0161.

Title: Section 73.61, AM Directional Antenna Field Strength Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 2,268 respondents and 2,268 responses.

Estimated Time per Response: 4–50 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 36,020 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 73.61 require that each AM station using directional antennas to make field strength measurement as often as necessary to ensure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must take field strength measurements as often as necessary. Also, all AM stations using directional signals must take partial proofs of performance as often as necessary. The FCC staff used the data in field inspections/investigations. AM licensees with directional antennas use the data to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–17441 Filed 8–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1180; FR ID 162074]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated

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.

DATES: Written PRA comments should be submitted on or before October 16, 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: 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.

OMB Control Number: 3060–1180.

Title: Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, state, local, or tribal government and not for profit institutions.

Number of Respondents: 359 respondents; 359 responses.

Estimated Time per Response: 0.5 to 2 hours.

Frequency of Response: One-time and on occasion reporting requirements, twice within 12 years reporting requirement, 6, 10 and 12-years reporting requirements and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

Total Annual Burden: 718 hours.

Total Annual Cost: No cost.

Needs and Uses: The FCC adopted the Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions Report and Order, FCC 14–50, on May 15, 2014, published at 79 FR 48442 (Aug. 15, 2014). The Commission seeks to extend for a period of three years from the Office of Management and Budget (OMB) some of the information collection requirements contained in FCC 14–50. The Commission will use the information to ensure compliance with required filings of notifications, certifications, license renewals, license cancellations, and license modifications. Also, such information will be used to minimize interference and to determine compliance with Commission’s rules.

The following is a description of the information collection requirements approved under this collection:

Section 27.14(k) requires 600 MHz licensees to demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the applicable benchmark.

Section 27.14(t)(6) requires 600 MHz licensees to make a renewal showing as a condition of each renewal. The showing must include a detailed description of the applicant’s provision of service during the entire license period and address: (i) The level and quality of service provided by the applicant (including the population served, the area served, the number of subscribers, the services offered); (ii) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (iii) the extent to which service is provided to rural areas; (iv) the extent to which service is provided to qualifying tribal land as defined in 47 CFR 1.2110(f)(3)(i); and (v) any other factors associated with the level of service to the public.

Section 27.17(c) requires 600 MHz licensees to notify the Commission within 10 days of discontinuance if they permanently discontinue service by

filing FCC Form 601 or 605 and requesting license cancellation.

Section 27.1321(b) previously designated as 27.19(b) requires 600 MHz licensees with base and fixed stations in the 600 MHz downlink band within 25 kilometers of Very Long Baseline Array (VLBA) observatories to coordinate with the National Science Foundation (NSF) prior to commencing operations.

Section 27.1321(c) previously designated as 27.19(c) requires 600 MHz licensees that intend to operate base and fixed stations in the 600 MHz downlink band in locations near the Radio Astronomy Observatory site located in Green Bank, Pocahontas County, West Virginia, or near the Arecibo Observatory in Puerto Rico, to comply with the provisions in 47 CFR 1.924.

Section 74.602(h)(5)(ii) requires 600 MHz licensees to notify the licensee of a studio-transmitter link (TV STL), TV relay station, or TV translator relay station of their intent to commence wireless operations and the likelihood of harmful interference from the TV STL, TV relay station, or TV translator relay station to those operations within the wireless licensee's licensed geographic service area. The notification is to be in the form of a letter, via certified mail, return receipt requested and must be sent not less than 30 days in advance of approximate date of commencement of operations.

Section 74.602(h)(5)(iii) requires all TV STL, TV relay station and TV translator relay station licensees to modify or cancel their authorizations and vacate the 600 MHz band no later than the end of the post-auction transition period as defined in 47 CFR 27.4.

These rules which contain information collection requirements are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which broadband deployment would be able to develop through the application of standard terrestrial wireless rules. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023-17438 Filed 8-14-23; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0800; FR ID 162286]

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.

DATES: Written PRA comments should be submitted on or before October 16, 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: 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.

OMB Control Number: 3060-0800.
Title: FCC Application for Assignments of Authorization and

Transfers of Control: Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.
Form Number: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, Individuals or households, not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents and Responses: 2,567 respondents; 2,567 responses.

Estimated Time per Response: 0.05 hours–1.80 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310 and 332.

Total Annual Burden: 2,957 hours.

Annual Cost Burden: \$532,728.

Needs and Uses: On July 18, 2022, the Commission adopted the Partition, Disaggregation and Leasing of Spectrum Report and Order and Second Further Notice of Proposed Rulemaking that modifies partitioning, disaggregation, and leasing rules to provide specific incentives for small carriers and Tribal Nations, and entities in rural areas, to voluntarily participate in ECIP (ECIP Report and Order in WT Docket No. 19-38, FCC 22-53). The ECIP proceeding is in response to Congressional direction in the Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act (MOBILE NOW Act) to consider steps to increase the diversity of spectrum access and the availability of advanced telecommunications services in rural areas. The ECIP will promote greater competition in the provision of wireless services, facilitate increased availability of advanced wireless services in rural areas, facilitate new opportunities for small carriers and Tribal Nations to increase access to spectrum, and bring more advanced wireless service including 5G to underserved communities.

The Commission seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060-0800 to permit the collection of the additional information and changes in connection with assignments of authorizations pursuant to the rules adopted by the Commission's ECIP Report and Order. Specifically, in the ECIP Report and Order, the Commission revised its rules to allow partition and/or disaggregation assignment applications pursuant to

§ 1.950 or full assignments pursuant to § 1.948, to designate a Qualifying Transaction identified in the application as seeking consideration under the ECIP. Respondents are also required to select the applicable ECIP prong to its Qualifying Transaction, pursuant to either § 1.60003 or § 1.60004.

Federal Communications Commission.

Katura Jackson,

Federal Register, Liaison Officer.

[FR Doc. 2023–17440 Filed 8–14–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: August 22, 2023 at 10:00 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 657 689 377#; or via web: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NDI2OTVhNDYtNTYxZS00MWY2LWJhZmQtMzI5ZTEzMDBiZDIx%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%221a441fb8-5318-4ad0-995b-f28a737f4128%22%7d.

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the July 25, 2023 Board Meeting Minutes
2. Monthly Reports
 - (a) Participant Report
 - (b) Investment Report
 - (c) Legislative Report
3. Quarterly Reports
 - (d) Metrics
4. OEA Annual Presentation
5. Internal Audit Update
6. Annual Financial Report
7. FY2022 FISMA Report
8. FY2023 FISMA Report
9. FY2024 Budget Proposal Approval

Closed Session

10. Information covered under 5 U.S.C. 552b (c)(4), (c)(9)(B), and (c)(10).

Authority: 5 U.S.C. 552b (e)(1).

Dated: August 10, 2023.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2023–17457 Filed 8–14–23; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0576; Docket No. CDC–2023–0061]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Possession, Use, and Transfer of Select Agents and Toxins. This data collection allows CDC to continue to collect information and ensure compliance under the Select Agent regulations.

DATES: CDC must receive written comments on or before October 16, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0061 by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to www.regulations.gov.

Please note: Submit all comments through the Federal eRulemaking portal (www.regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: omb@cdc.gov.

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. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

Possession, Use, and Transfer of Select Agents and Toxins (42 CFR 73) (OMB Control No. 0920–0576, Exp. 1/31/2024)—Extension—Office of Readiness and Response (ORR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Subtitle A of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (42 U.S.C. 262a), requires the United States Department of Health and Human Services (HHS) to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to public health and safety (select agents and toxins). Subtitle B of the Public

Health Security and Bioterrorism Preparedness and Response Act of 2002 (which may be cited as the Agricultural Bioterrorism Protection Act of 2002), (7 U.S.C. 8401), requires the United States Department of Agriculture (USDA) to regulate the possession, use, and transfer of biological agents or toxins that have the potential to pose a severe threat to animal or plant health, or animal or plant products (select agents and toxins). Accordingly, HHS and USDA have promulgated regulations requiring individuals or entities that possess, use, or transfer select agents and toxins to register with the CDC or the Animal and Plant Health Inspection Service (APHIS). See 42 CFR part 73, 7 CFR part 331, and 9 CFR part 121 (the select agent regulations). The Federal Select Agent Program (FSAP) is the collaboration of the CDC, Division of Select Agents and Toxins (DSAT) and the APHIS Division of Agricultural Select Agents and Toxins (DASAT) to administer the select agent regulations in a manner to minimize the administrative burden on persons subject to the select agent regulations. CDC and APHIS have adopted an identical system to collect information for the possession, use, and transfer of select agents and toxins.

CDC is requesting OMB approval to continue to collect information under the select agent regulations through the use of five forms:

- Application for Registration for Possession, Use, and Transfer of Select Agents and Toxins (APHIS/CDC Form 1) with an addendum form: Form 1 Sec 6A—Amendment to a Certificate of Registration.
 - Request to Transfer Select Agents or Toxins (APHIS/CDC Form 2).
 - Incident Notification and Reporting (Theft, Loss, or Release) (APHIS/CDC Form 3).
 - Reporting the Identification of a Select Agent or Toxin (APHIS/CDC Form 4).
 - Request for Exemption of Select Agents and Toxins for an Investigational Product (APHIS/CDC Form 5).
- In addition to the forms listed above, the following forms will also be used:
- Request for Exclusions—An individual or entity may request an exclusion from the requirements of the select agent regulations of an attenuated strain of a select agent or a select toxin modified to be less potent or toxic. (42 CFR 73.3(e) and 73.4(e)).
 - Documentation of self-inspection—Annual inspections that are conducted by the entity must be documented. (42 CFR 73.9(a)(6)).
 - Request for Expedited Review—An individual's security risk assessment may be expedited upon written request by a Responsible Official and a showing of good cause. (42 CFR 73.10(f)).
 - Request Regarding a Restricted Experiment—An individual or entity may request approval to perform a "restricted experiment" (42 CFR 73.13).
 - Security Plan—An individual or entity must develop and implement a written security plan, biosafety plan, and incident response plan (42 CFR 73.11(a), 42 CFR 73.12(a), and 42 CFR 73.14(a)).
 - Training—The Responsible Official at the must ensure a record of the training for each individual with access to select agents and toxins and each escorted individual is maintained (42 CFR 73.15(d)).
 - Administrative Review—An individual or entity may appeal a denial, revocation, or suspension of registration. (42 CFR 73.20(a)).
 - Biosafety Plan—An individual or entity required to register under this part must develop and implement a written biosafety plan that is commensurate with the risk of the select agent or toxin, given its intended use. The biosafety plan must contain sufficient information and documentation to describe the biosafety and containment procedures for the select agent or toxin, including any animals (including arthropods) or plants intentionally or accidentally exposed to or infected with a select agent (42 CFR 73.12(a)).
 - Incident Response Plan—An individual or entity required to register under this part must develop and implement a written incident response plan based upon a site specific risk assessment. The incident response plan must be coordinated with any entity-wide plans, kept in the workplace, and available to employees for review (42 CFR 73.14 (a)).
 - Records—An individual or entity required to register under this part must maintain complete records relating to the activities covered by the select agent regulations (42 CFR 73.17 (a)).

The total estimated annualized burden for all data collection was calculated using the 2021 Annual Report of the Federal Select Agent Program available at <https://www.selectagents.gov/resources/publications/annualreport/2021.htm> or FSAP IT system and is estimated as 3,539 hours. Information will be collected through FSAP IT system, fax, email and hard copy mail from respondents. Upon OMB approval, CDC will begin use of the revised forms in January 2024 through January 2027. There is no cost to the respondents.

ESTIMATED ANNUALIZED BURDEN HOURS

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Sections 3 & 4	Request for Exclusions	1	1	1	1
Sections 5 & 6	Form 4—Report of Identification of a Select Agent or Toxin.	917	1	1	917
Sections 5 & 6	Form 5—Request of Exemption	1	1	1	1
Section 7	Form 1—Application for Registration	5	1	5	25
Section 7	Form 1 Sec 6A—Amendment to a Certificate of Registration.	144	5	1	720
Section 9	Documentation of self-inspection	233	1	1	233
Section 10	Request for Expedited Review	1	1	30/60	1
Section 11	Security Plan	233	1	1	233
Section 12	Biosafety Plan	233	1	1	233
Section 13	Request Regarding a Restricted Experiment	3	1	2	6
Section 14	Incident Response Plan	233	1	1	233
Section 15	Training	233	1	1	233
Section 16	Form 2—Request to Transfer Select Agents and Toxins.	229	1	1.5	380
Section 17	Records	233	1	30/60	117

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Section	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Section 19	Form 3—Notification of Theft, Loss, or Release	185	1	1	185
Section 20	Administrative Review	22	1	1	22
Total					3539

Jeffrey M. Zirger,

*Lead, Information Collection Review Office,
Office of Public Health Ethics and
Regulations, Office of Science, Centers for
Disease Control and Prevention.*

[FR Doc. 2023–17483 Filed 8–14–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1408]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) received approval from the Office of Management and Budget (OMB) to conduct Rapid Surveys System (RSS) (OMB Control No. 0920–1408), which includes fielding four surveys per year. The 06/30/2023 approval gave clearance for Round 1 of the survey. In accordance with the Terms of Clearance NCHS will publish a 30-day **Federal Register** Notice announcing each new survey so that public comments can be received about the specific content of each survey. This Notice includes specific details about the questions that would be asked in Round 2 of the RSS and serves to allow 30 days for public and affected agency comments, consistent with OMB's Terms of Clearance.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) 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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Center for Health Statistics (NCHS) Rapid Surveys System (RSS) Round 2 (OMB Control No. 0920–1408)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (HHS), acting through NCHS, collect data about the health of the population of the United States. The NCHS Rapid Surveys System (RSS) collects data on emerging public health topics, attitudes, and behaviors using cross-sectional samples from two commercially available, national probability-based online

panels. The RSS then combines these data to form estimates that approximate national representation in ways that many data collection approaches cannot. The RSS collects data in contexts in which decision makers' need for time-sensitive data of known quality about emerging and priority health concerns is a higher priority than their need for statistically unbiased estimates.

The RSS complements NCHS's current household survey systems. As quicker turnaround surveys that require less accuracy and precision than CDC's more rigorous population representative surveys, the RSS incorporates multiple mechanisms to carefully evaluate the resulting survey data for their appropriateness for use in public health surveillance and research (e.g., hypothesis generating) and facilitates continuous quality improvement by supplementing these panels with intensive efforts to understand how well the estimates reflect populations at most risk. The RSS data dissemination strategy communicates the strengths and limitations of data collected through online probability panels as compared to more robust data collection methods.

The RSS has three major goals: (1) to provide CDC and other partners with time-sensitive data of known quality about emerging and priority health concerns; (2) to use these data collections to continue NCHS's evaluation of the quality of public health estimates generated from commercial online panels; and (3) to improve methods to communicate the appropriateness of public health estimates generated from commercial online panels. The RSS is designed to have four rounds of data collection each year with data being collected by two contractors with probability panels. A cross-sectional nationally representative sample will be drawn from the online probability panel maintained by each of the contractors. As part of the base (minimum sample size), each round of data collection will collect 2,000 responses per quarter. The RSS can be expanded by increasing the number of completed responses per round or the

number of rounds per year as needed up to a maximum of 28,000 responses per year per contractor or 56,000 total responses per year. Additionally, each data collection may include up to 2,000 additional responses per quarter (8,000 for the year) to improve representativeness. This increases the maximum burden by up to 16,000 responses per year. The RSS may also target individual surveys to collect data only from specific subgroups within existing survey panels and may supplement data collection for such groups with additional respondents from other probability or nonprobability samples. An additional 12,000 responses per year may be used for these developmental activities. Survey questions being asked of the panelists will be cognitively tested. This cognitive testing will help survey users interpret the findings by understanding how respondents answer each question. Each round's questionnaire will consist of four main components: (1) basic demographic information on respondents to be used as covariates in analyses; (2) new, emerging, or

supplemental content proposed by NCHS, other CDC Centers, Institute, and Offices, and other HHS agencies; (3) questions used for calibrating the survey weights; and (4) additional content selected by NCHS to evaluate against relevant benchmarks. NCHS will use questions from Components 1 and 2 to provide relevant, timely data on new, emerging, and priority health topics to be used for decision making. NCHS will use questions from Components 3 and 4 to weight and evaluate the quality of the estimates coming from questions in Components 1 and 2. Components 1 and 2 will contain different topics in each round of the survey. NCHS submits a 30-day **Federal Register** Notice with information on the contents of each round of data collection. NCHS calibrates survey weights from the RSS to gold standard surveys. Questions used for calibration in this round of RSS will include marital status and employment, social and work limitations, use of the internet in general and for medical reasons, telephone use, civic engagement, and language used at home and in other

settings. All these questions have been on the National Health Interview Survey (NHIS) in prior years allowing calibration to these data. Finally, all RSS rounds will include several questions that were previously on NHIS that will be used for benchmarking to evaluate data quality. Panelists in the RSS will be asked about health status; chronic conditions; social determinants of health; healthcare access and utilization; and health behaviors will be used to benchmark the RSS to NCHS survey. The estimated total annual burden hours for the three-year approval period remains at 28,079 burden hours. There are no costs to respondents other than their time. For RSS Round 2, the following hours will be used. The NCHS RSS Round 2 (2023) data collection is based on 13,100 complete surveys (4,367 hours) and 20 cognitive interviews (20 hours) using the same survey instrument. The total number of responses is 13,120 and the total burden is 4,387 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults 18+	Survey: NCHS RSS Round 2 (2023) Cognitive Interviews	13,100	1	20/60
Adult 18+	Cognitive Interviews	20	1	1

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.
[FR Doc. 2023–17480 Filed 8–14–23; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Child Abuse and Neglect Background Checks for Child Care and Early Education Project (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and

Families (ACF) is proposing an information collection activity for the Child Abuse and Neglect Background Checks for Child Care and Early Education (CAN Checks for CCEE) Project. The goal of the project is to better understand how states and territories use findings from CAN registry checks, as required by the Child Care and Development Block Grant Act of 2014 (CCDBG), to make child care employment eligibility determinations. The study will also be used to understand state and territory variation, facilitators, and challenges in implementing CAN registries; and any resulting within- or across-state/territory equity implications.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing

OPREinfocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed information collections for the CAN Checks for CCEE Project is designed to explore how states and territories implement CAN background checks for child care employment eligibility decisions. While the CCDBG Act of 2014 clearly describes procedures and exclusionary criteria pertaining to the use of criminal and sexual offender background checks to inform child care employment eligibility decisions, requirements for the use of CAN background checks are less clear. The findings will be of interest to ACF, and in particular to OPRE and the Office of Child Care, who are interested in the effective and equitable implementation of CAN registry background checks of prospective and current child care staff. Findings will also be of interest to Child Care and Development Fund (CCDF) state/territory lead agencies that oversee the CCDF program in their states/

territories and the state/territory offices that oversee early care and education. The results of this study also have implications for child care programs and staff. Further, given the U.S. Congress' interest in prior exploratory work on this topic, it may be informative for federal lawmakers, as well.

CCDF lead agency staff and CAN registry custodians that participate in this information collection will be asked to complete a voluntary, one-time web-based survey. The survey for CCDF lead agency staff will focus on the practices and policies related both to in-state/territory and interstate CAN registry checks, including what data they request and receive, as well as how they use it in making child care employment eligibility decisions. The survey for

CAN registry custodians will focus on the contents of CAN registries, policies around inclusion in/expunction from the registries, and policies regarding sharing data.

Approximately half of CCDF lead agency survey respondents (up to 28) will be invited to participate in voluntary follow-up interviews. This open-ended data collection format will allow for exploration of key themes that emerge from the surveys; facilitators and barriers in, and respondent recommendations around, implementing the CAN registry checks; how practice may vary from policy; and, in some cases, to obtain answers to questions not answered in the survey.

Respondents: Each state, territory, and the District of Columbia will be invited to complete two web-based surveys: one CCDF lead agency survey and one CAN

registry custodian survey. Given that each agency may have multiple staff members with relevant knowledge of different survey topics and no one staff member may possess all of the knowledge to complete the survey, we are allowing for up to 3 respondents per state/territory for the CCDF lead agency staff and 2 respondents per state/territory for the CAN registry custodian surveys (up to 280 total individuals). Once survey administration is complete, one CCDF lead agency staff person from half of the states, territories, and the District of Columbia (up to 28) will be invited to participate in a follow-up interview. For the interviews, we will select a sample of CCDF lead agency staff that represents diversity across state and territory approaches toward the CAN registry background checks.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Instrument 1: CCDF Lead Agency Survey	168	1	* 0.75	126
Instrument 2: CAN Custodian Survey	112	1	* 0.75	84
Instrument 3: CCDF Lead Agency Interview	28	1	1.50	42
Estimated Total Annual Burden Hours:				252

* Note that this is the estimated time to complete the full survey, which could be completed by one individual or multiple individuals. Surveys completed by multiple individuals will take less time for each individual to provide a response.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Research funding set-aside authorized by the CCDBG Act of 2014 and funded by CCDF. Section 658O(a)(5) of CCDBG (as codified at 42 U.S.C. 9857 *et seq.*) grants the Secretary of the U.S. Department of Health and Human Services the authority to reserve up to ½ percent of the total Discretionary and Mandatory CCDF funding "to conduct research and

demonstration activities, as well as periodic external, independent evaluations of the impact of the program described by this subchapter on increasing access to child care services and improving the safety and quality of child care services, using scientifically valid research methodologies, and to disseminate the key findings of those evaluations widely and on a timely basis."

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023-17435 Filed 8-14-23; 8:45 am]

BILLING CODE 4184-23-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2023-N-0250]

Ildiko M. Knoll: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Ildiko M. Knoll for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Ms. Knoll engaged in a pattern of importing or offering for import misbranded drugs (*i.e.*, in an amount, frequency, or dosage that is inconsistent with personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. Ms. Knoll was given notice of the proposed debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of May 29, 2023 (30 days after receipt of the notice), Ms. Knoll had not responded. Ms. Knoll's failure to respond and request a hearing constitutes a waiver of her right to a hearing concerning this matter.

DATES: This order is applicable August 15, 2023.

ADDRESSES: Any application by Ms. Knoll for termination of debarment

under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. An application submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on <https://www.regulations.gov>.

- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

- *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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All applications must include the Docket No. FDA-2023-N-0250. Received applications 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 an application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Compliance and Enforcement, Office of Policy, Compliance, and Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(D) of the FD&C Act, that the individual has engaged in a pattern of importing or offering for import (*i.e.*, in an amount, frequency, or dosage that is inconsistent with personal or household use) misbranded drugs that are not designated in an authorized electronic data interchange system as products regulated by FDA.

After an investigation, FDA discovered that Ms. Knoll had engaged in numerous instances of importing or offering for import misbranded drugs. Specifically, between November 24, 2021, and November 29, 2022, Ms. Knoll imported or offered for import 100 parcels containing a total of 100

products (18,435 pieces, 9,495 tablets) that contained tadalafil and sildenafil. FDA determined that these products were misbranded drugs because their labeling lacked adequate directions for use, as required by section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), and/or they were prescription drugs and their labels failed to bear the symbol "Rx only," as required by section 503(b)(4)(A) of the FD&C Act (21 U.S.C. 353(b)(4)(A)). All the parcels containing the misbranded drugs serving as the basis for this action were intercepted by FDA at the John F. Kennedy International Mail Facility and were addressed to Ms. Knoll at an address connected to her.

As a result of this pattern of importing or offering for import (*i.e.* in an amount, frequency, or dosage that is inconsistent with personal or household use) misbranded drugs that are not designated in an authorized electronic data interchange system as products regulated by FDA, in accordance with section 306(b)(3)(D) of the FD&C Act, FDA sent Ms. Knoll, by United Parcel Service on April 27, 2023, a notice proposing to debar her for a 5-year period from importing or offering for import any drug into the United States. The attachment to that notice contained a table listing all the parcels intercepted by FDA that contained the misbranded drugs serving as a basis for this action. Among other pieces of information, that table contained the submission date of the entry, the product contained in the package, the quantity of the product, and the product violation FDA found for each entry. That attachment is posted to the docket and can be accessed by the public at <https://www.regulations.gov>. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Ms. Knoll's pattern of conduct and concluded that her conduct warranted the imposition of a 5-year period of debarment. The proposal informed Ms. Knoll of the proposed debarment and offered her an opportunity to request a hearing, providing 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Knoll received the proposal and notice of opportunity for a hearing on April 29, 2023. Ms. Knoll failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(D) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Knoll has engaged in a pattern of importing or offering for import (*i.e.* in an amount, frequency, or dosage that is inconsistent with personal or household use) misbranded drugs that are not designated in an authorized electronic data interchange system as products regulated by FDA. FDA finds that this pattern of conduct should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Ms. Knoll is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Ms. Knoll is a prohibited act.

Dated: August 9, 2023.

Lauren K. Roth,
Associate Commissioner for Policy.

[FR Doc. 2023-17481 Filed 8-14-23; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2022-D-0745]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biologics License Applications Procedures and Requirements; Voluntary Consensus Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the

collection of information by September 14, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. The OMB control number for this information collection is 0910-0338. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301-796-5733, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Biologics License Applications (BLAs) Procedures and Requirements

OMB Control Number 0910-0338—Revision

This information collection helps support FDA implementation of statutory and regulatory requirements that govern biologics product licensing. We have issued regulations in 21 CFR parts 600–680 setting forth applicable standards and procedures that include associated reporting, recordkeeping, and disclosure requirements. Respondents to the information collection are persons or entities who engage in manufacture of biologics products. We provide information on our website at <https://www.fda.gov/vaccines-blood-biologics/development-approval-process-cber/biologics-license-applications-bla-process-cber> regarding BLAs, including available Agency resources.

We are revising the information collection to support implementation of a standards recognition program for regenerative medicine therapies at FDA’s Center for Biologics Evaluation and Research (CBER) designed to identify and recognize Voluntary Consensus Standards (VCS) to facilitate the development and assessment of regenerative medicine therapy (RMT) products regulated by CBER when such standards are appropriate. The draft guidance for industry entitled “Voluntary Consensus Standards

Recognition Program for Regenerative Medicine Therapies” (June 2022) describes procedures CBER will follow when a request for recognition of a VCS is received. The draft guidance also explains that any interested party may request recognition of a VCS. The draft guidance document is available for download at <https://www.fda.gov/media/159237/download>. We issued the guidance document consistent with our Good Guidance Practice regulations in 21 CFR 10.115, which provide for public comment at any time. We intend on finalizing the guidance document upon OMB approval of the attendant information collection.

The use of recognized VCS can assist stakeholders in more efficiently meeting regulatory requirements and increasing regulatory predictability for RMT products. We will use requests for recognition to help identify appropriate VCS that facilitate the development and assessment of RMT products. We encourage sponsors to use FDA-recognized VCS in submissions, as conformity to relevant standards helps streamline regulatory review, foster quality, and may facilitate a manufacturer’s preparation of submissions. As explained in Section V of the draft guidance document, any stakeholder can request recognition of a specific VCS.

In the **Federal Register** of June 16, 2022 (87 FR 36327), we published a 60-day notice announcing the availability of the draft guidance and invited public comment on the proposed collection of information. We received comment letters supportive of our use of voluntary consensus standards for regenerative medicine therapies. Comments encouraged broad application of a voluntary consensus program. No comments were received regarding the request for recognition information collection provisions and FDA’s need for the information; the accuracy of our burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected in the requests; or ways to minimize burden of the requests. Comments are being considered as the guidance is finalized.

Description of Respondents:

Respondents to this collection of information are product sponsors, applicants and other stakeholders interested in the development of RMT products regulated in CBER.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Voluntary consensus standards recognition program for regenerative medicine therapies; guidance for industry	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for recognition of a voluntary consensus standard and submission of information as specified in Section V	9	1	9	3	27

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimate is based on our experience with similar information collection activities. We note that standards development can be a lengthy process and provide an estimate we believe reflects the amount of time necessary to prepare and submit the information as discussed in Section V of the guidance document.

Dated: August 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–17460 Filed 8–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–3007]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Human Drug Compounding Outsourcing Facilities Under the Federal Food, Drug, and Cosmetic Act and Associated Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection pertaining to the registration of human drug compounding outsourcing facilities under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and associated fees.

DATES: Either electronic or written comments on the collection of information must be submitted by October 16, 2023

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 16, 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–3007 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act and Associated Fees Under Section 744K.” 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:

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-793-5733, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501-3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act and Associated Fees Under Section 744K

OMB Control Number 0910-0776—Extension

This information collection helps to support implementation of section 503B of the FD&C Act (21 U.S.C. 353b) and the assessment and remission of user fees under section 744K of the FD&C Act (21 U.S.C. 379j-62).

A. Registration

Under section 503B of the FD&C Act a facility that compounds drugs may elect to register with FDA as an outsourcing facility. Upon electing to do so, outsourcing facilities must register annually between October 1 and December 31, providing information that includes its name, place of business, a unique facility identifier, and a point of contact's email address and phone number. The outsourcing facility must also indicate: (1) whether it intends to compound, within the next calendar year, a drug that appears on our drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e); and (2) whether it compounds from bulk drug substances and, if so, whether it compounds sterile or nonsterile drugs from bulk drug substances. Registered outsourcing facilities must submit a drug product report upon initial registration under section 503B and twice each year in June and December for drug products produced during the previous 6-month period. We require this data be submitted electronically, unless a waiver is granted, in structured product labeling (SPL) format.

Drug products compounded in a registered outsourcing facility can qualify for exemptions from the FDA-approval requirements in section 505 of the FD&C Act (21 U.S.C. 355), the requirement to label products with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), and the requirements for drug supply chain security in section 582 of the FD&C Act (21 U.S.C. 360eee-1) if the requirements in section 503B of the FD&C Act have been met. We provide general information and resources on website at <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/human-drug-compounding>, including a list of currently registered outsourcing facilities as required under section 503B.

B. Registration Fees

Upon registration, and in accordance with section 503B and 744K of the FD&C Act, facilities are assessed an establishment fee and receive an annual invoice from FDA with instructions for remitting payment. Until payment is made for each given fiscal year (FY), an establishment is not considered to be registered as an outsourcing facility. In accordance with section 744K of the FD&C Act, certain outsourcing facilities may qualify for a small business reduction in the amount of the annual establishment fee. To qualify for this reduction, an outsourcing facility must submit a written request to FDA certifying that the entity meets the requirements for the reduction. For each FY a firm seeks to qualify as a small business and receive the fee reduction, it must submit to FDA a written request by April 30 of the preceding FY. For example, an outsourcing facility must have submitted a written request for the small business reduction by April 30, 2023, to qualify for a reduction in the FY 2024 annual establishment fee.

Section 744K of the FD&C Act also requires an outsourcing facility to submit written requests for a small business reduction in a specified format: Form FDA 3908 entitled "Outsourcing Facilities for Human Drug Compounding: Small Business Establishment Fee Reduction Request." The completed form should be submitted via email to CDERCollections@fda.hhs.gov. Form FDA 3908 is available from our website at: <https://www.fda.gov/media/90740/download>. In response to the submission of a small business reduction request, FDA will send a notification letter of its decision and recommends that applicants retain the notification.

C. Reinspection Fees

In accordance with section 503B of the FD&C Act, outsourcing facilities are subject to inspection and, in accordance with section 744K of the FD&C Act, subject to reinspection fees. A reinspection fee will be incurred for each reinspection and is intended to reimburse FDA when a particular outsourcing facility requires reinspection because of noncompliance identified during a previous inspection. After a reinspection is conducted, FDA will send an invoice to the email address indicated in the facility's registration file. The invoice contains instructions for remitting the reinspection fee. For further information on human drug compounding outsourcing facility fees, please visit our

website at <https://www.fda.gov/industry/fda-user-fee-programs/human-drug-compounding-outsourcing-facility-fees>.

D. Dispute Resolution

Agency regulations under § 10.75 (21 CFR 10.75) provide for internal Agency review of decisions. Accordingly, an outsourcing facility may request reconsideration of an FDA decision related to the fee provisions of section 744K of the FD&C Act. Requests for reconsideration should include the facility's rationale for its position that FDA's decision was in error and include any additional information that is relevant to the outsourcing facility's assertion. The denial of a request for reconsideration may be appealed by submitting a written request to FDA, consistent with § 10.75.

To assist respondents with the information collection provisions, we have developed Agency guidance

documents. The guidance document entitled "Registration of Human Drug Compounding Outsourcing Facilities Under Section 503B of the FD&C Act (November 2014)" describes the process for electronic submission of establishment registration information for outsourcing facilities and provides information on how to obtain a waiver from submitting registration information electronically. The guidance document entitled "Fees for Human Drug Compounding Outsourcing Facilities Under Sections 503B and 744K of the FD&C Act (November 2014)" (Fees for Human Drug Compounding Outsourcing Facilities guidance) describes the types and amounts of fees that outsourcing facilities must pay, the adjustments to fees required by law, how outsourcing facilities can submit payment to FDA, the consequences of outsourcing facilities' failure to pay fees, and how an outsourcing facility can qualify as a small business to obtain a reduction in

fees. The guidance documents were issued consistent with our good guidance practice regulations (21 CFR 10.115), which provide for public comment at any time, and are available on our website at <https://www.fda.gov/media/87570/download> and <https://www.fda.gov/media/136683/download>, respectively.

All requests for dispute resolution should be sent via email to the Division of User Fee Management and Budget Formulation at CDERCollections@fda.hhs.gov. If an outsourcing facility does not have email access, it can mail a request to FDA via the carrier of its choice. For the most updated physical mailing address, visit this website: <https://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm382846.htm>.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity; 21 CFR section; guidance or associated FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Electronic Submission of Registration Information Using the SPL Format; 207.61; Section III. of the "eDRLS" ² guidance	79	1	79	4.5	355
Waiver Request from Electronic Submission of Registration Information; 207.65; Section VI. of the "eDRLS" ² guidance	1	1	1	1	1
Remission of Annual Establishment Fee from FDA Invoice; Section E.1. of the Fees for Human Drug Compounding Outsourcing Facilities guidance	76	1	76	0.5 (30 minutes)	38
Request for Small Business Reduction (Form FDA 3908)	18	1	18	25	450
Reinspection Fees; Section C. of the Fees for Human Drug Compounding Outsourcing Facilities guidance	12	1	12	0.5 (30 minutes)	6
Reconsideration Requests; Section V.B.1. of the Fees for Human Drug Compounding Outsourcing Facilities guidance	1	1	1	1	1
Appeal of Reconsideration Denials; Section V.B.2. of the Fees for Human Drug Compounding Outsourcing Facilities guidance	1	1	1	1	1
Total			188		852

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

² "Providing Regulatory Submissions in Electronic Format—Drug Establishment Registration and Drug Listing" (May 2009; available at: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/providing-regulatory-submissions-electronic-format-drug-establishment-registration-and-drug-listing>).

We estimate 79 respondents annually will submit outsourcing facility registrations using the SPL format as specified in Agency guidance and assume each registration will require 4.5 hours to prepare and complete. We expect no more than one waiver request from the electronic submission requirement annually and assume each

waiver request will require 1 hour to prepare and submit. We estimate each of the 76 registrants will remit annual establishment fees and assume this task requires 30 minutes per respondent. We estimate that 18 of those respondents will request a small business reduction in the amount of the annual establishment fee using Form FDA 3908.

We estimate 12 outsourcing facilities annually will remit reinspection fees and assume this will require 30 minutes. We also estimate that we will receive one request for reconsideration and one appeal of a denial of a request for reconsideration and assume 1 hour per respondent for this activity.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN ¹

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Retention of Small Business Designation Notification Letter	18	1	18	0.5 (30 minutes)	9

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that annually 18 outsourcing facilities will maintain a copy of their small business designation letter and that maintaining each record will require 30 minutes. These estimates reflect a slight increase in the number of annual registrations, but a decrease in reinspection fee submissions.

Dated: August 9, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–17458 Filed 8–14–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<http://videocast.nih.gov/>).

A portion of this meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: September 7, 2023.

Closed: 10:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Open: 11:00 a.m. to 4:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Conference Rooms A, B & C, 6700B Rockledge Drive Bethesda, MD 20817.

Contact Person: Ranga V. Srinivas, Ph.D., Acting Executive Secretary, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive Room 2114, Bethesda, MD 20892, (301) 451–2067 srinivar@mail.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://www.niaaa.nih.gov/AboutNIAAA/AdvisoryCouncil/Pages/default.aspx>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: August 10, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17488 Filed 8–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Human Studies of Diabetes and Obesity.

Date: September 1, 2023.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, chenhui@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 10, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–17487 Filed 8–14–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0027]

Agency Information Collection

Activities: Personal Identity Verification Official (PIV–O) Credential and Shield Request, OMB Control No. 1601–NEW

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget

(OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until October 16, 2023. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2023–0027, at:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2023–0027. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

SUPPLEMENTARY INFORMATION:

Department of Homeland Security (DHS) Form 11000–16 is used to request a DHS Personal Identity Verification Official (PIV–O) credential, and if applicable, a shield (*i.e.*, metallic law enforcement or non-law enforcement badge) to accompany the credential, for DHS employees, contractors, and affiliates authorized to perform specific official functions pursuant to law, statute, regulation, or DHS Directive. This collection of information, using Department of Homeland Security (DHS) Form 11000–16, is necessary to support *Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors*, issued on August 27, 2004, which mandates a Federal standard for secure and reliable forms of identification. The collection is used in accordance with System of Record Notice *DHS/ALL–026 Department of Homeland Security Personal Identity Verification Management System* and Department policy to request a DHS Personal Identity Verification Official (PIV–O) credential, and if applicable, a shield (*i.e.*, metallic law enforcement or non-law enforcement badge) to accompany the credential. A DHS PIV–O credential describes authorities delegated to specific DHS employees, contractors, and affiliates who interact with the public or Federal, State, local, or Tribal entities to perform authorized official functions pursuant to law, statute, regulation, or DHS Directive.

The collection of information is obtained from (or on behalf of) the respondent, who may be a current or prospective DHS contractor (*i.e.*,

member of the public). The information is collected electronically using a fillable PDF form submitted to the respective DHS credentialing office. The respondent is responsible for only completing Sections 1, 2, and 3 of DHS Form 11000–16; the remaining sections of the form (Sections 4, 5, and 6) are completed by DHS Federal employees. Qualified personnel within the DHS credentialing office holding a requisite role in the Identity and Credential System(s) of Record use the collected information to adjudicate the action requested in Section 1 of the DHS Form 11000–16, and as necessary, enroll, identify and retrieve the applicant's record in the DHS Identity and Credential System(s) of Record.

The collection of information is obtained from the respondent electronically using a fillable PDF form; upon completion, the form is submitted to the respective DHS Component credentialing office in accordance with internal procedures. This information collection does not have an impact on small businesses or other small entities. Collection of the information on DHS Form 11000–16 is voluntary; however, failure to provide the information requested may prevent the respondent (*i.e.*, applicant) from receiving the requested DHS PIV–O credential and/or shield.

There is no assurance of confidentiality provided to the respondents. Consistent with DHS's information sharing mission, this information collection may be shared with Federal, State, local, Tribal, foreign or international government agencies, including other DHS Components and offices. This sharing will only take place after DHS determines that the receiving entity has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in Privacy Impact Assessment, *DHS/ALL/PIA–014 Personal Identity Verification/Identity Management System (PIV/IDMS)* and System of Records Notice, *DHS/ALL–026 Department of Homeland Security Personal Identity Verification Management System*.

This is a new collection.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Personal Identity Verification Official (PIV–O) Credential and Shield Request.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 1,500.

Estimated Time per Respondent: 15 mins.

Total Burden Hours: 375 hrs.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2023–17505 Filed 8–14–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2023–0023]

Meeting; Homeland Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of closed Federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet virtually on Thursday, August 29, 2023. The meeting will be closed to the public.

DATES: *Written Comments:* Written comments must be received no later than 5:00 p.m. ET on August 25, 2023. The meeting will take place from 4:00 p.m. ET to 5:00 p.m. ET on Thursday, August 29, 2023.

Comments: Members of the public are invited to provide comment on issues that will be considered by the committee as listed in the

SUPPLEMENTARY INFORMATION section

below. Comments should be submitted by 5:00 p.m. ET on August 25, 2023 and must be identified by Docket Number DHS–2023–0023. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Please follow the instructions for submitting written comments.

- *Email:* HSAC@hq.dhs.gov. Include the Docket Number DHS–2023–0023 in the subject line of the email.

Instructions: All submissions received must include the words “Homeland Security Advisory Council” and the Docket Number for this action. Comments received will be posted without alteration to www.regulations.gov, including any personal information provided. You may wish to review the Privacy & Security notice available via a link on the homepage of www.regulations.gov.

Docket: For access to the docket and comments received by the Homeland Security Advisory Council, please go to www.regulations.gov and enter docket number DHS–2023–0023.

FOR FURTHER INFORMATION CONTACT: Rebecca Sternhell, Acting Executive Director, HSAC at 202–891–2876 or HSAC@hq.dhs.gov.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C. 1009, which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The HSAC provides organizationally independent, strategic, timely, specific, actionable advice, and recommendations to the Secretary of Homeland Security on matters related to homeland security. The Council consists of senior executives from government, the private sector, academia, law enforcement, and non-governmental organizations.

The Artificial Intelligence (AI) Threats & Defense Subcommittee is tasked with (1) assessing the ways AI systems can be utilized and leveraged by adversarial forces and (2) providing recommendations to the Secretary on development and research strategies and defense initiatives to combat against malevolent and adversarial AI utilization.

The HSAC will meet in a closed session from 4:00 p.m. to 5:00 p.m. ET to receive a For Official Use Only (FOUO) and Law Enforcement Sensitive

(LES) draft report from the AI Threats and Defense Subcommittee. HSAC members will receive a briefing from the Subcommittee Leadership and then the members will deliberate on the FOUO/LES report and vote on the report. Senior DHS Leadership will provide remarks prior to adjournment.

Basis for Closure: In accordance with 5 U.S.C. 1009(d), the Secretary of Homeland Security has determined this meeting must be closed as the disclosure of the information relayed would be detrimental to the public interest for the following reasons:

The Council will participate in a sensitive operational discussion containing For Official Use Only and Law Enforcement Sensitive information. The session is closed pursuant to U.S.C. 552b(c)(7) and (9)(B) because the disclosure of this information could significantly frustrate implementation of proposed agency actions.

Dated: August 9, 2023.

Rebecca Sternhell,

Acting Executive Director, Homeland Security Advisory Council, Department of Homeland Security.

[FR Doc. 2023–17462 Filed 8–14–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

[Docket Number DHS–2023–0026]

Agency Information Collection Activities: Contractor Fitness/Security Screening Request Form; OMB Control No. 1601–NEW

AGENCY: Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until October 16, 2023. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number Docket # DHS–2023–0026, at:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # DHS–2023–0026. All comments received will be

posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>

SUPPLEMENTARY INFORMATION:

This information collection will be used to initiate the fitness screening process for determining if a person invited to perform work under a contract for the Department of Homeland Security (DHS), is fit to perform such work and eligible for access to DHS resources, based on the risk levels of the designated position. The respondent provides and/or verifies biographical information to complete Section II of DHS Form 11000–25. This collection of information is necessary to initiate the contractor fitness screening process for determining whether a person (*i.e.*, the respondent) who has been invited to perform work under a contract for, or on behalf of the Department of Homeland Security (DHS), should be deemed fit to perform such work and eligible for logical and/or physical access to DHS resources based on the risk levels of the designated position. The respondent is responsible for providing and/or verifying information to complete Section II of DHS Form 11000–25; the remaining sections of DHS Form 11000–25 (Sections I, III, and IV) are completed by DHS federal employees. Authorities that support this information collection include:

- Executive Order (E.O.) 9397, *Numbering System for Federal Accounts Relating to Individual Persons, as amended by E.O. 13478, Amendments to E.O. 9397 Relating to Federal Agency Use of Social Security Numbers*
- E.O. 10577, *Amending the Civil Service Rules and Authorizing a New Appointment System for the Competitive Service*
- E.O. 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information*
- E.O. 13764, *Amending the Civil Service Rules, Executive Order 13488, and Executive Order 13467 To Modernize the Executive Branch-Wide Governance Structure and Processes for Security Clearances, Suitability and Fitness for Employment, and Credentialing, and Related Matters*
- Title 5, Code of Federal Regulations (CFR), part 731, *Suitability*

- Title 5, CFR, part 732, *National Security Positions*
- Federal Acquisition Regulation (FAR) 52.204–2, *Security Requirements*
- FAR 52.204–9, *Personal Identity Verification of Contractor Personnel*
- Homeland Security Presidential Directive 12

This is a new information collection. DHS collects this information from the respondent, so Personnel Security entities can initiate the appropriate screening process for determining whether the respondent should be deemed fit to perform work under a contract for, or on behalf of DHS, and eligible for logical and/or physical access to DHS resources based on the risk levels of the designated position.

This information collection utilizes an automated technological solution (*i.e.*, Personnel Security Forms application) which negates the need for a paper-based DHS Form 11000 25, thereby reducing the burden on the respondent during the initiation phase of the contractor fitness screening process. After receiving an invitation to perform work under a contract, the respondent (*i.e.*, DHS contractor applicant) submits and verifies certain biographical information (*e.g.*, full name, position title, SSN, gender, date and place of birth, U.S. citizenship status, telephone number, and email address) through a public facing web portal. Once the information intake is complete, the Personnel Security Forms application produces an automated electronic version of the DHS Form 11000–25 for use by the appropriate Personnel Security entities to make a fitness determination.

This information collection does not have an impact on small businesses or other small entities.

The information collection for DHS Form 11000–25 is voluntary; however, failure to provide this information may delay or prevent an individual's fitness determination and eligibility for physical and logical access to federally controlled facilities or information systems.

There is no assurance of confidentiality provided to the respondents. Consistent with DHS' information sharing mission, all or a portion of the information collection may be disclosed outside DHS consistent with the routine uses set forth in Privacy Impact Assessment, *DHS/ALL/PIA–038, Integrated Security Management System (ISMS)*, and System of Record Notice, *DHS/ALL–023 Department of Homeland Personnel Security Management*.

This is a new collection.

The Office of Management and Budget is particularly interested in comments which:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security (DHS).

Title: Contractor Fitness/Security Screening Request Form.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 45,000.

Estimated Time per Respondent: 15 mins.

Total Burden Hours: 11,250 Hrs.

Robert Dorr,

Acting Executive Director, Business Management Directorate.

[FR Doc. 2023–17504 Filed 8–14–23; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2023–0155; FXIA16710900000–234–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits

activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by September 14, 2023.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at <https://www.regulations.gov> in Docket No. FWS–HQ–IA–2023–0155.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet:* <https://www.regulations.gov>. Search for and submit comments on Docket No. FWS–HQ–IA–2023–0155.

- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2023–0155; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703–358–2185 or via email at DMAFR@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at <https://www.regulations.gov> unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at <https://www.regulations.gov>, your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered

species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Yale University, New Haven, CT; Permit No. PER3796318

The applicant requests authorization to import biological samples of Galapagos giant tortoise (*Chelonoidis niger*) from Galapagos, Ecuador, for the purpose of enhancing the survival of the species through scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Duke University Lemur Center, Durham, NC; Permit No. PER3848559

The applicant requests a permit to export four live captive-bred Mongoose lemur (*Eulemur mongoz*) to Tierpark Berlin Zoo, Berlin, Germany, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Hyatt Regency Resort & Spa, Lahaina, HI; Permit No. PER3778561

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for African penguin (*Spheniscus demersus*) to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Craig Stanford, Altadena, CA; Permit No. PER3897907

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Alexandria Zoological Park, Alexandria, LA; Permit No. PER3941571

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Galapagos giant tortoise.	<i>Chelonoidis niger</i> .
Radiated tortoise	<i>Astrochelys radiata</i> .
Yellow-spot river turtle.	<i>Podocnemis unifilis</i> .
Tartaruga	<i>Podocnemis expansa</i> .

Common name	Scientific name
Chinese alligator	<i>Alligator sinensis</i> .
Broad-snouted caiman.	<i>Caiman latirostris</i> .
African slender-snouted crocodile.	<i>Crocodylus cataphractus</i> .
African dwarf crocodile.	<i>Osteolaemus tetraspis tetraspis</i> .
Congo dwarf crocodile.	<i>Osteolaemus tetraspis osborni</i> .
Andean condor	<i>Vultur gryphus</i> .
Military macaw	<i>Ara militaris</i> .
Palawan peacock pheasant.	<i>Polyplectron napoleonis</i> .
Param wallaby	<i>Macropus parma</i> .
Ring-tail lemur	<i>Lemur catta</i> .
Ruffed lemur	<i>Varecia species</i> .
Cottontop tamarin	<i>Saguinus oedipus</i> .
Pied tamarin	<i>Saguinus bicolor</i> .
Geoffroy's tamarin	<i>Saguinus geoffroyi</i> .
Golden-headed lion tamarin.	<i>Leontopithecus chrysomelas</i> .
Lion-tailed macaque ..	<i>Macaca silenus</i> .
Lar gibbon	<i>Hylobates lar</i> .
Gibbon	<i>Nomascus species</i> .
Siamang	<i>Symphalangus syndactylus</i> .
Maned wolf	<i>Chrysocyon brachyurus</i> .
Black-footed cat	<i>Felis nigripes</i> .
Clouded leopard	<i>Neofelis nebulosa</i> .
Snow leopard	<i>Uncia uncia</i> .
Amur leopard	<i>Panthera pardus orientalis</i> .
African lion	<i>Panthera leo leo</i> .
Tiger	<i>Panthera tigris</i> .
South American tapir	<i>Tapirus terrestris</i> .
Baird's tapir	<i>Tapirus bairdii</i> .
Grevy's zebra	<i>Equus grevyi</i> .
Somali wild ass	<i>Equus africanus somalicus</i> .
Southern pudu	<i>Pudu puda</i> .
Lowland anoa	<i>Bubalus depressicornis</i> .
Brown caiman	<i>Caiman crocodilus fuscus</i> .
African lion	<i>Panthera leo melanochaita</i> .
Nile crocodile	<i>Crocodylus niloticus</i> .
Salmon-crested cockatoo.	<i>Cacatua moluccensis</i> .
White cockatoo	<i>Cacatua alba</i> .

Applicant: Arthur Newcombe, South Miami, FL; Permit No. 11665D

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by

searching <https://www.regulations.gov> for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to [regulations.gov](https://www.regulations.gov) and search for "12345A".

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Timothy MacDonald,

Government Information Specialist, Branch of Permits, Division of Management Authority.

[FR Doc. 2023-17482 Filed 8-14-23; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/
A0A501010.999900]

Annual Meeting of Federal Partners and Tribal 477 Workgroup Under Indian Employment, Training and Related Services Act of 2017

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA), is announcing the annual meeting of the Federal agencies and Tribes that participate in the Indian Employment, Training, and Related Services Act of 2017, as amended, known as "Public Law 477 Work Group."

DATES:

- **Meeting:** The annual Federal Partner and Tribal 477 Work Group meeting will be held on Tuesday, September 26, 2023, from 2:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). Please see **SUPPLEMENTARY INFORMATION** below for details on how to participate.

- **Comments:** Interested persons are invited to submit comments on or before October 26, 2023. Please see **ADDRESSES** below for details on how to submit written comments.

ADDRESSES: Send your comments to Johnna Blackhair, Acting Deputy Bureau Director, Indian Services, Bureau of Indian Affairs, 849 C Street NW, MS-3645-MIB, Washington, DC 20240; or by email to Johnna.Blackhair@bia.gov. Please reference the Public Law 477 Work Group in the subject line of your email.

FOR FURTHER INFORMATION CONTACT: Johnna Blackhair, (Acting) Deputy

Bureau Director, Indian Services, Bureau of Indian Affairs, Johnna.Blackhair@bia.gov; (202) 513-7640.

SUPPLEMENTARY INFORMATION: This meeting is being held under the authority of Public Law 102-477, as amended (25 U.S.C. 3410(a)(3)(B)(i)), and section 2 of the Interdepartmental Memorandum of Agreement, signed by Secretary Haaland on September 12, 2022.

In 2017, the Congress enacted the Indian Employment Training and Related Services Consolidation Act of 2017, Public Law 115-93, codified at 25 U.S.C. 3401-3417 (2017 Act). The 2017 Act update amended and expanded the Indian Employment and Related Services Demonstration Act of 1992, Public Law 102-477 (as amended in 2017, Public Law 477) by, in part, identifying 12 Federal agencies that are now subject to the amended law. Under Public Law 477, Tribes may propose to integrate eligible grant programs from the Departments of the Interior, Agriculture, Commerce, Education, Energy, Health & Human Services, Homeland Security, Housing & Urban Development, Justice, Labor, Transportation, and Veterans Affairs, consolidate and reprogram grant funds in accordance with a single plan, budget, and report approved by the Secretary of the Interior (477 Plan). As required by the 2017 updates to Public Law 477, the Department of the Interior entered into a Memorandum of Agreement (MOA) among the 12 Federal agencies to implement Public Law 477. Each of the 12 Federal agencies signed a renegotiated MOA in the fall of 2022.

As DOI is the lead agency responsible for implementing Public Law 477, the BIA, as delegated by the Secretary of the Interior, announces the annual meeting of participating Tribes and Federal agencies. As directed by statute, the meeting will be co-chaired by the Assistant Secretary—Indian Affairs, Bryan Newland, and the 477 Tribal Workgroup Committee Chairs, Margaret Zientek (Contiguous 48) and Holly Morales (Alaska). 25 U.S.C. 3410(a)(3)(B)(i).

Meeting Agenda

1. Opening Remarks
2. Status of the Implementation of the revised Memorandum of Agreement
 - A. 477 Programs Integrated
 - B. Plan Approval/Denial Process
 - C. Waiver Approvals/Denials
 - D. Summary Status of Participating 477 Tribes (FY 2023 as of 07/31/23)
 - E. Fund Transfer
3. Annual Reports

- A. 2023 Report(s) from the 12 Federal Partners
 - B. Annual Report Roll Up/Statistical and Financial Summary
 - C. Tribal Recognitions
4. Topics for Discussion
 - A. OMB 1076-0135 (version 2) Reporting Form (expiration extended to 11-30-24) [DOI]
 - B. TANF-ACF-IM-2023-01—To inform tribes administering Tribal TANF programs under a 477 plan of the Pandemic Emergency Assistance Fund reallocation [Tribal Working Group]
 - C. Applicability of Uniform Guidance (2 CFR part 200) requirements [Tribal Working Group]
 - D. Labor Force Report [Tribal Working Group]
 - E. Grantee status of SNAP E&T [Tribal Working Group]

5. Forum and Discussion regarding Conflict Resolution

6. Adjourn

Meeting Access

- **Physical Access:** The meeting will be held at the U.S. Department of the Interior, 1849 C St NW, Washington, DC 20240.

- **Virtual Meeting Access:** Members of the public wishing to attend the meeting should visit <https://www.zoomgov.com/meeting/register/vJltdeiqjgrHcYBAYs22tAUjTCz4qP0yR8> for virtual access.

- **Audio Meeting Access:** To join and participate in the virtual meeting, please use the following connection information:

- Phone Number: (669) 254-5252
- Meeting ID: 160 212 4317
- Passcode: 337450

- **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 DOI sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Authority: This notice is published in accordance with 25 U.S.C. 3410(a)(3)(B)(i).

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023-17448 Filed 8-14-23; 8:45 am]

BILLING CODE 4337-15-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[BLM AZ FRN_MO4500170881 AZ-SRP-030-23-13]

Notice of Temporary Closure and Temporary Restrictions of Selected Public Lands in Mohave County, AZ**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of temporary closure and restrictions.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, as amended, notice is hereby given that a temporary closure and temporary restrictions of activities will be in effect on public lands administered by the Lake Havasu Field Office, Bureau of Land Management (BLM), to minimize the risk of potential collisions with spectators and racers during the annual Ultra4 USA Legends of the Fall off-highway vehicle (OHV) race events authorized under a special recreation permit (SRP).

DATES: The temporary restrictions for the Ultra4 USA Legends of the Fall take effect at 11:59 p.m., October 24, through midnight October 29, 2023. The temporary closure takes effect at 11:59 p.m., October 25, 2023, through midnight October 29, 2023. All times are listed in local time.

FOR FURTHER INFORMATION CONTACT: Sabrina Bice, Outdoor Recreation Planner, BLM Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona 86403, (928) 302-4255. Also see the Lake Havasu Field Office website: <https://www.blm.gov/office/lake-havasu-field-office>. 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 temporary closure and restrictions affect public lands in and around the Standard Wash Open OHV area near the communities of Lake Havasu City in Mohave County, Arizona. The temporary closure applies to all public use, including pedestrian and vehicle, unless excepted. The temporary closure area follows the event racecourse. The temporary restriction area applies to the remaining public lands in the Standard

Wash Open OHV area as designated in the 2007 Lake Havasu Field Office Approved Resource Management Plan and Record of Decision. Within the temporary restriction area, the temporary restrictions apply in addition to all existing regulations.

On September 4, 2020, the decision record authorizing off-road high-speed events within the Standard Wash Open OHV area was signed. The environmental assessment analyzing these routes (EA #DOI-BLM-AZ-C030-2020-0043) concluded that allowing permitted motorized racers exclusive use of the designated open OHV area would mitigate safety concerns.

The temporary closure and restrictions are necessary because of the high-speed nature of the race event and the added safety concerns due to limited visibility during nighttime. Roads leading into the public lands under the temporary closure and restrictions will be posted with copies of the temporary closure, temporary restrictions, and associated maps to notify the public. The temporary closure and restriction orders will also be posted in the Lake Havasu Field Office and online at <https://www.blm.gov/office/lake-havasu-field-office>. Maps of the affected area and other documents associated with this temporary closure are available at the Lake Havasu Field Office, 1785 Kiowa Avenue, Lake Havasu City, Arizona.

The closures and restrictions are issued under the authority of 43 CFR 8364.1, which allows the BLM to establish closures and restrictions for the protection of persons, property, and public lands and resources. Violation of any of the terms, conditions, or restrictions contained within this closure and restrictions order may subject the violator to citation or arrest with a penalty of a fine or imprisonment or both as specified by law.

Temporary Closure

a. The designated racecourse is closed to public entry during the temporary closure, with the following exceptions:

- i. The person is an employee or authorized volunteer with the BLM, a law enforcement officer, emergency medical service provider, fire protection provider, or another public agency employee working at and assigned to the event;
- ii. The person is working at or attending the event directly on behalf of the permit holder.

b. Motor vehicles may be operated within the temporary closure area under the circumstances listed below:

- i. Race participants and support vehicles on designated routes;

ii. BLM, medical, law enforcement, and firefighting vehicles are authorized at all times;

iii. Vehicles operated by the permit holder's staff or contractors and volunteers are authorized at all times. These vehicles must display evidence of event registration at all times in such manner that it is visible on the front of the vehicle while the vehicle is in motion.

Temporary Restrictions**1. Environmental Resource Management and Protection**

a. Cutting or collecting firewood of any kind, including dead and downed wood or other vegetative material, is prohibited.

b. Grey Water Discharge: The discharge and dumping of grey water onto the ground surface is prohibited. Grey water is defined as water that has been used for cooking, washing, dishwashing, or bathing and/or contains soap, detergent, food scraps, or food residue, regardless of whether such products are biodegradable or have been filtered or disinfected.

c. Human Waste: The depositing of human waste (liquid and/or solid) on the ground surface is prohibited.

2. Alcohol/Prohibited Substance

a. Possession of alcohol by minors is prohibited. Selling or offering to sell any alcoholic beverage on public lands under this notice is prohibited.

2. Drug Paraphernalia

a. The possession of drugs and/or drug paraphernalia is prohibited.

3. Disorderly Conduct

a. Disorderly conduct is prohibited. No person shall cause a public disturbance or create a risk to other persons on public lands by engaging in activities which include, but are not limited to, the following:

- i. Making unreasonable noise;
- ii. Creating a hazard or nuisance;
- iii. Refusing to disperse when directed to do so by an authorized officer;
- iv. Resisting arrest or issuance of citation by an authorized officer engaged in performance of official duties; interfering with any Bureau of Land Management employee or volunteer engaged in performance of official duties;
- v. Assaulting, committing a battery upon, or
- vi. Knowingly giving any false or fraudulent report of an emergency situation or crime to any Bureau of Land Management employee or volunteer

engaged in the performance of official duties.

4. Eviction of Persons

a. The temporary restriction area is closed to any person who:

- i. Has been evicted from the event by the permit holder, whether or not the eviction was requested by an employee or other authorized representative of the BLM;
- ii. Has been evicted from the event by an employee or other authorized representative of the BLM; or
- iii. Has been ordered by a federal, state, local, or Tribal law enforcement officer to leave the area of the permitted event.

b. Any person evicted from the event forfeits all privileges to be present within the temporary restriction area.

5. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

- i. Motor vehicle operators must possess evidence of valid vehicle insurance.
- ii. Motor vehicles and trailers must not block a street used for vehicular travel or a pedestrian pathway. Parking any off-highway vehicle in violation of posted restrictions; or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles; creating a safety hazard; or endangering any person, property, or feature, is prohibited. Vehicles parked in violation are subject to citation, removal, and/or impoundment at the owner's expense.
- iii. Operating a vehicle through, around, or beyond a restrictive sign, barricade, fence, or traffic control barrier or device is prohibited.
- iv. Failure to obey any person authorized to direct traffic or control access to event area including federal, state, local, and Tribal law enforcement officers, BLM employees and their authorized representatives, and designated race officials is prohibited.

6. Public Camping

a. The temporary restriction area is closed to public camping with the following exceptions:

- i. The permitted event's spectators, who are camped in designated spectator areas, as marked by protective fencing, barriers, and informational signage provided by the permit holder; and
 - ii. The permit holder's authorized staff, contractors, and BLM-authorized event managers.
- b. Spectator area site reservations, or denying other visitors or parties from utilizing unoccupied portions of the spectator area by marking with flags,

tape, posts, cones, etc., are prohibited. Vehicles and trailers may not be left unattended for over 72 hours.

c. Failure to observe restricted area quiet hours of midnight to 6 a.m. is prohibited.

7. Weapons

a. Discharging or use of firearms or other weapons is prohibited.

b. The prohibition above shall not apply to federal, state, local, and Tribal law enforcement personnel who are working in their official capacity at the event.

8. Public Use

a. Failure to obey any official sign posted by the BLM, federal, state, local, and Tribal law enforcement, La Paz County, or the permit holder is prohibited.

Existing Regulations

The following list of existing regulations is not intended to be comprehensive. A complete list of laws and regulations applicable to public lands in Arizona may be viewed at: <http://www.azd.uscourts.gov/sites/default/files/general-orders/19-14.pdf>.

Environmental Resource Management and Protection

a. No person may deface, disturb, remove, or destroy any natural object—43 CFR 8365.1–5(a)(1).

b. Fireworks: The use, sale, or possession of personal fireworks is prohibited—43 CFR 9212.1 (h).

c. Black Water Discharge: The discharge and dumping of black water onto the ground surface is prohibited. Black water is defined as wastewater containing feces, urine, and/or flush water—43 CFR 8365.1–1(b)(3).

d. Trash: The discharge of any and all trash/litter onto the ground surface is prohibited. All event participants must pack out or properly dispose of all trash at an appropriate disposal facility—43 CFR 8365.1–1(b)(1).

e. Hazardous Materials: The dumping or discharge of vehicle oil, petroleum products, or other hazardous household, commercial, or industrial refuse or waste onto the ground surface is prohibited. This applies to all recreational vehicles, trailers, motorhomes, port-a-potties, generators, and other camp infrastructure—43 CFR 8365.1–1(b)(3).

1. Alcohol/Prohibited Substance

a. Possession of an open container of an alcoholic beverage by the driver or operator of any motorized vehicle, whether or not the vehicle is in motion, is prohibited—43 CFR 8365.1–6.

b. Possession of alcohol by minors. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands is prohibited—43 CFR 8365.1–6, Supplementary Rule 63 FR 43716.

c. Operation of a motor vehicle while under the influence of alcohol, marijuana, narcotics, or dangerous drugs is prohibited—43 CFR 8341.1(f)(3).

2. Disorderly Conduct

a. Obstructing, resisting, or attempting to elude a law enforcement officer, or failing to follow their orders or directions is prohibited—43 CFR 8365.1–4(a)(4).

3. Motor Vehicles

a. Motor vehicles must comply with the following requirements:

- i. The operator of a motor vehicle must possess a valid driver's license—43 CFR 8341.1(e).
- ii. Motor vehicles and trailers must possess evidence of valid registration—43 CFR 8341.1(d).
- iii. Motor vehicles must not exceed the posted speed limit—43 CFR 8341.1(f)(2).

4. Pets or Other Animals

a. Allowing any pet or other animal to be unrestrained is prohibited. All pets must be restrained by a leash of not more than six feet in length—43 CFR 8365.2–1(c).

Enforcement: Any person who violates these closures or restrictions may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, or both. In accordance with 43 CFR 8365.1–7, any person is also subject to penalty for violations of state law.

Authority: 43 CFR 8364.1.

William Mack,

District Manager.

[FR Doc. 2023–17436 Filed 8–14–23; 8:45 am]

BILLING CODE 4331–12–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1259
(Modification Proceeding)]

Certain Toner Supply Containers and Components Thereof (I); Notice of Commission Determination Not To Review an Initial Determination Terminating the Modification Proceeding Based on Withdrawal of the Petition; Termination of Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined not to review an initial determination (“ID”) (Order No. 23) of the presiding administrative law judge (“ALJ”) granting the unopposed motion of respondents Katun Corporation (“Katun”) and General Plastic Industrial Co. Ltd. (“General Plastic”) to terminate the modification proceeding based on withdrawal of their petition for modification. The modification proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On April 13, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on a complaint filed by Canon Inc. of Tokyo, Japan; Canon U.S.A., Inc. of Melville, New York; and Canon Virginia, Inc. of Newport News, Virginia (collectively, “Complainants”). See 86 FR 19284-86. The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain toner supply containers and

components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,209,667 (“the ‘667 patent”); 10,289,060 (“the ‘060 patent”); 10,289,061 (“the ‘061 patent”); 10,295,957 (“the ‘957 patent”); 10,488,814 (“the ‘814 patent”); 10,496,032 (“the ‘032 patent”); 10,496,033 (“the ‘033 patent”); 10,514,654 (“the ‘654 patent”); 10,520,881 (“the ‘881 patent”); 10,520,882 (“the ‘882 patent”); 8,565,649; 9,354,551; and 9,753,402. *Id.* The complaint further alleges that a domestic industry exists. *Id.*

The Commission instituted two separate investigations based on the complaint and defined the scope of the present investigation as whether there is a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of toner supply containers and components thereof by reason of infringement of certain claims the ‘667 patent, the ‘060 patent, the ‘061 patent, the ‘957 patent, the ‘814 patent, the ‘032 patent, the ‘033 patent, the ‘654 patent, the ‘881 patent, and the ‘882 patent (collectively, “the Asserted Patents”). *Id.* The notice of investigation (“NOI”) names twenty-six respondents, including General Plastic of Taichung, Taiwan and Katun of Minneapolis, Minnesota. *Id.* The Office of Unfair Import Investigations (“OUII”) was also a party to the investigation. *Id.*

The complaint and NOI were later amended to correct the name of a respondent. Order No. 5 (May 13, 2021), *unreviewed by* 86 FR 29292-93 (June 1, 2021).

Twenty-two of the named respondents were later found in default (hereinafter, “Defaulting Respondents”). See Order No. 7 (June 22, 2021), *unreviewed by* Notice (July 6, 2021); Order No. 18 (Sept. 28, 2021), *unreviewed by* Notice (Oct. 27, 2021). Several respondents, including General Plastic and Katun were later terminated from the investigation based on consent order stipulations. Order No. 10 (July 1, 2021), *unreviewed by* Notice (July 19, 2021). Another respondent was later terminated based on partial withdrawal of the complaint. Order No. 13, *unreviewed by* Notice (Aug. 25, 2021).

The Commission also terminated the investigation as to certain claims of the Asserted Patents. Order No. 11, *unreviewed by* Notice (Aug. 25, 2021).

On August 1, 2022, the Commission affirmed an initial determination issued by the presiding ALJ, granting summary determination of a violation of section 337 with respect to Defaulting Respondents. 87 FR 48039-41 (Aug. 5, 2022). Accordingly, the Commission

issued: (1) a GEO prohibiting the unlicensed entry of certain toner supply containers and components thereof that infringe one or more of claim 1 of the ‘667 patent; claim 1 of the ‘060 patent; claim 1 of the ‘061 patent; claim 1 of the ‘957 patent; claims 1 and 12 of the ‘814 patent; claims 50, 58, and 61 of the ‘032 patent; claims 1 and 13 of the ‘033 patent; claims 46 and 50 of the ‘654 patent; claims 1, 10, and 13 of the ‘881 patent; or claims 1 and 8 of the ‘882 patent; and (2) CDOs against certain of Defaulting Respondents. *Id.*

On April 25, 2023, respondents Katun and General Plastic filed a petition pursuant to Commission Rule 210.76 (19 CFR 210.76) to modify the GEO in order to clarify that the order does not cover certain Katun and General Plastic redesigned toner supply containers. On May 5, 2023, Complainants filed an opposition to the petition. OUII did not file a response to the petition.

On June 1, 2023, the Commission instituted a modification proceeding, pursuant to Commission Rule 210.76(a) (19 CFR 210.76(a)), to determine whether certain redesigned toner supply containers of Katun and General Plastic infringe the ‘667 patent, the ‘060 patent, the ‘061 patent, the ‘957 patent, the ‘814 patent, the ‘032 patent, the ‘033 patent, the ‘654 patent, the ‘881 patent, or the ‘882 patent. 88 FR 35915-35917 (June 1, 2023).

On July 3, 2023, Katun and General Plastic filed a motion to terminate the modification proceeding based on the withdrawal of their petition. That same day, Complainants filed a response stating that Complainants do not oppose the motion but reserve their right to oppose institution of any future proceeding. On July 5, 2023, OUII filed a response supporting the motion to terminate.

On July 11, 2023, the presiding ALJ issued the subject ID granting Katun’s and General Plastic’s motion to terminate the modification proceeding pursuant to Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)). Order No. 23 (July 11, 2023). The ID finds that the motion complies with the Commission’s rules and that there are no extraordinary circumstances that might justify denying the motion. No party petitioned for review of the subject ID.

The Commission has determined not to review the subject ID. The modification proceeding is terminated.

The Commission vote for this determination took place on August 9, 2023.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as

amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 9, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023-17475 Filed 8-14-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Disclosures for Participant Directed Individual Account Plans

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before September 14, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202-693-0213, or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This information collection requires plan fiduciaries to disclose plan- and investment-related fee and expense information to participants and beneficiaries in all participant directed individual account plans (e.g., 401(k)-type plans) for plan years that began on or after January 1, 2010 and at least annually thereafter (defined as at least once in any 14-month period, without regard to whether the plan operates on a calendar or fiscal year basis). For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 8, 2023 (88 FR 8317).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL-EBSA.

Title of Collection: Disclosures for Participant Directed Individual Account Plans.

OMB Control Number: 1210-0090.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 619,650.

Total Estimated Number of Responses: 1,039,819,787.

Total Estimated Annual Time Burden: 5,204,349 hours.

Total Estimated Annual Other Costs Burden: \$221,557,106.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Acting Departmental Clearance Officer.

[FR Doc. 2023-17425 Filed 8-14-23; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0039]

Intertek Testing Services NA, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Intertek Testing Services NA, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 30, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at: <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA-2007-0039). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website.

All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 30, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2110 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for an expansion of current recognition as a NRTL. ITSNA

requests the addition of 23 test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including ITSNA, which details that NRTL's scope of recognition. These

pages are available from the OSHA website at <http://www.osha.gov/dts/otpcanrtl/index.html>.

ITSNA currently has 13 facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/itsna>.

II. General Background on the Application

ITSNA submitted an application, dated December 18, 2020 (OSHA-2007-0039-0047), requesting the conversion of 23 existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled "Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination."

Table 1, below, lists the 23 sites that ITSNA's application requested for inclusion in the NRTL's expanded scope of recognition:

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN ITSNA'S NRTL SCOPE OF RECOGNITION

ITSNA site name	Address	Country
Columbus	1717 Arlingate Lane, Columbus, Ohio 43228, United States	North America.
Detroit	45000 Helm Street—Suite 150, Plymouth Township, Michigan 48170, United States	North America.
Grand Rapids	4700 Broadmoor SE—Suite 200, Kentwood, Michigan 49512, United States	North America.
Edmonton	14920 135 Ave., Edmonton, Alberta T5V 1R9, Canada	North America.
Montreal	1829 32nd Avenue, Lachine, Quebec H8T 3J1, Canada	North America.
Toronto	6225 Kenway Drive, Mississauga, Ontario L5T 2L3, Canada	North America.
Mexico City	Poniente 134 No. 660, Col. Industrial Vallejo, Mexico City, Azcapotzalco 02300, Mexico.	North America.
Kaufbeuren	Innovapark 20, Kaufbeuren, 87600, Germany	Europe.
Leatherhead	Cleeve Road, Leatherhead, Surrey KT22 7SA, United Kingdom	Europe.
Milton Keynes	Davy Avenue, Knowhill, Milton Keynes, Buckinghamshire MK5 8NL, United Kingdom.	Europe.
Udine	Via Principe di Udine 114, Campofornido, Udine 33030, Italy	Europe.
Guangzhou	Building E, Guangdong Software Science Park, No. 7-2, Caipin Road, Science City—GETDD, Guangzhou, Guangdong 510663, China.	Asia.
Hangzhou	4th Floor, Building 4#, No. 22, 22nd Street, Qiantang District Hangzhou, 310018, China.	Asia.
Shanghai Fengxian	Plant 5, No. 6958 Daye Road, Fengxian District, Shanghai, 201405, China	Asia.
Shanghai Qinzhou	No. 86, 1198 Qinzhou Road North, Shanghai, 200233, China	Asia.
Shenzhen	2F, Building B, No. 308 Wuhe Avenue, Zhangkengjing Community, GuanHu Sub-district, LongHua District, Shenzhen, Guangdong 518067, China.	Asia.

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN ITSNA'S NRTL SCOPE OF RECOGNITION—Continued

ITSNA site name	Address	Country
Shunde (Foshan)	Guangzhou Branch Shunde Testing Site, Room 604, Block 5, Tianfulai International Industrial Park (the fifth phase), No. 3 Changfu West Road, Ronggui Town, Shunde District, Foshan City, Guangdong Province, China.	Asia.
Mumbai	"F Wing" Tex Centre, Chandivali Farm Road, Andheri (East), Mumbai, Maharashtra—400072, India.	Asia.
New Delhi	E-20 & E26 Block B1, Mohan Cooperative Industrial Area, Mathura Road, New Delhi, 110044, India.	Asia.
Tokyo	Yasuda Shibaura No. 2 Bldg. 4F, 3-2-12, Kaigan, Minato-ku, Tokyo, Japan 108-0022.	Asia.
Seoul	3, Gongdan-ro 160beon-gil, Intertek Building, Gunpo-si, Gyeonggi-do 15845, South Korea.	Asia.
Bangkok	1285/5 Prachachuen Road, Wong Sawang, Bangsue, Bangkok 10800, Thailand	Asia.
Taipei	5F, No. 423, Ruiguang Road, Neihu District, Taipei, 114690, Taiwan	Asia.

OSHA has preliminarily determined that it is appropriate to review this application under the SNAP Transition Policy. ITSNA's application was timely submitted under that policy, and OSHA preliminarily finds that the SNAP sites in ITSNA's application met all other preconditions of eligibility for conversion to recognized sites under the policy (See SNAP Termination Policy, part III 1.a-g, 85 FR at 75047). OSHA also preliminarily decided that it was not necessary to conduct on-site reviews in connection with ITSNA's expansion application, based on historical assessment records and supporting documentation submitted by ITSNA. Moreover, OSHA staff performed assessments of several ITSNA facilities included in the SNAP conversion application from June 2020 to November 2022, and, while assessors found some nonconformances with the requirements of 29 CFR 1910.7, ITSNA addressed these issues sufficiently. OSHA staff has preliminarily determined that OSHA should grant the application and grant recognition to the 23 sites requested in the application.

III. Preliminary Finding on the Application

ITSNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation indicates that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the 23 additional test sites for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether ITSNA meets the

requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0039 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant ITSNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

IV. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is

issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 9, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-17427 Filed 8-14-23; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2007-0043]

TUV SUD America, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV SUD America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 30, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at: <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions

interested parties about submitting personal information such as Social Security numbers and birthdates.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0043). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 30, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV SUD America, Inc. (TUVAM), is applying for an expansion of current recognition as a NRTL. TUVAM requests the addition of nine test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of

recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

TUVAM currently has 7 facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV SUD America, Inc., 401 Edgewater Place, Suite #500, Wakefield, Massachusetts 01880. A complete list of TUVAM's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuvam>.

II. General Background on the Application

TUVAM submitted an application, dated January 24, 2021 (OSHA–2007–0043–0045), requesting the conversion of ten existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled “Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination.” TUVAM amended their application on December 10, 2021 (OSHA–2007–0043–0046), to remove one site from the original request, leaving nine sites to be considered in the expansion request.

Table 1 below, lists the nine sites that TUVAM's application requested for inclusion in the NRTL's expanded scope of recognition:

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN TUVAM'S NRTL SCOPE OF RECOGNITION

TUVAM site name	Address	Country
Shenzhen	Building 6, 12 & 13, Zhiheng Wisdomland Business Park Nantou Checkpoint Road 2, 518052, Shenzhen, Guangdong Province.	China.
Gormley	11 Gordon Collins Drive, Gormley, Ontario, L0H 1G0	Canada.
Fareham	Octagon House, Concorde Way, Segensworth North, Fareham, Hampshire, PO15 5RL, United Kingdom.	United Kingdom.
Seoul	10, Gukjegumyung-ro, Yeongdeungpo-gu, Seoul, Republic of Korea ..	Korea.
Tampa	5610 West Sligh Avenue, Suite 100, Tampa, Florida	United States.
Tokyo	Sumitmo Fudosan, Nishi-shinjuku Bldg. No 4 8F 4–33–4, Nishi-Shinjuku, Sjinjuku-ku, Tokyo, 160–0023 Japan.	Japan.

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN TUVAM'S NRTL SCOPE OF RECOGNITION—Continued

TUVAM site name	Address	Country
Taipei	7F, No 37, Section 2, Zhongyang, South Road, Beitou District, 11270 Taipei City, Taiwan.	Taiwan.
Singapore	No. 15 International Business Park Singapore 609937	Singapore.
Guangzhou	5F/8F (East), Communication Building, 163 Pingyun Road, Huangpu Avenue West, Guangzhou, 510656, Guangdong Province.	China.

OSHA has preliminarily determined that it is appropriate to review this application under the SNAP Transition Policy. TUVAM's application was timely submitted under that policy, and OSHA preliminarily finds that the SNAP sites in TUVAM's application met all other preconditions of eligibility for conversion to recognized sites under the policy (See SNAP Transition Policy, part III 1.a–g, 85 FR at 75047). OSHA also preliminarily decided that it was not necessary to conduct on-site reviews in connection with TUVAM's expansion application, based on historical assessment records and supporting documentation submitted by TUVAM. Moreover, OSHA staff performed assessments of several TUVAM facilities included in the SNAP conversion application from June 2020 to November 2022, and, while assessors found some nonconformances with the requirements of 29 CFR 1910.7, TUVAM addressed these issues sufficiently. OSHA staff has preliminarily determined that OSHA should grant the application and grant recognition to the nine sites requested in the application.

III. Preliminary Finding on the Application

TUVAM submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file and pertinent documentation indicates that TUVAM can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the nine additional test sites for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVAM's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether TUVAM meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in

writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA–2007–0043 (for further information, see the “Docket” heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVAM's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

IV. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 9, 2023.

James S. Frederick,
Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–17429 Filed 8–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0042]

CSA Group Testing & Certification, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of CSA Group Testing & Certification, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 30, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at: <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

OSHA will place comments, including personal information, in the public docket, which will be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2006–0042). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or

others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 30, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that CSA Group Testing & Certification, Inc. (CSA), is applying for an expansion of current recognition as a NRTL. CSA requests the addition of sixteen test sites to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that

scope. OSHA maintains an informational web page for each NRTL, including CSA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpc/nrtl/index.html>.

CSA currently has six facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: CSA Group Testing & Certification, Inc., 178 Rexdale Boulevard, Etobicoke, Ontario M9W 1R3. A complete list of CSA's scope of recognition is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/csa>.

II. General Background on the Application

CSA submitted an application, dated December 15, 2020 (OSHA-2006-0042-0034), requesting the conversion of sixteen existing Satellite Notification Acceptance Program (SNAP) sites to recognized sites under the NRTL Policy for Transitioning to Satellite Notification and Acceptance Program Termination (SNAP Transition Policy) published in the **Federal Register** on November 24, 2020 (85 FR 75042), as amended by a June 22, 2022 Memorandum from James S. Frederick, Deputy Assistant Secretary for Occupational Safety and Health, to Regional Administrators and Executive Staff, titled "Second Revision to the Nationally Recognized Testing Laboratory (NRTL) Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination."

Table 1, below, lists the sixteen sites that CSA's application requested for inclusion in the NRTL's expanded scope of recognition:

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN CSA'S NRTL SCOPE OF RECOGNITION

CSA site name	Address	Country
CSA Group Milan	Palazzo Cassiopea, Via Paracelso N 22, 20864 Agrate Brianza, Italy	Italy.
CSA Group Dallas	2860 Guilder Drive, Plano, Texas 75074	United States.
CSA Group Bangalore	Beary's Global Research Triangle, A-3, Einstein Building, Bidarahalli Hobli, Whitefield Ashram Road (SH 35), Bangalore-560 067, India.	India.
CSA Group Hawarden	Unit 6, Hawarden Industrial Park, Hawarden, CH5 3US, United Kingdom	United Kingdom.
CSA Group Plattling	Straubinger Str. 100, 94447 Plattling, Germany	Germany.
CSA Group Seoul	494, Wiryeseunhwan-ro, Songpa-gu Seoul, Republic of Korea	Korea.
CSA Group Taoyuan	No. 26, Fuxing 3rd Road, Guishan District, Taoyuan City	Taiwan.
CSA Group Taipei	5F No. 12, Wenhui Street, Neihu District, Taipei City 114, Taiwan	Taiwan.
CSA Group Tokyo	5-40-6 Koishikawa Bunkyo-ku, Tokyo 112-0002, Japan	Japan.
CSA Group Shanghai	Floor 1, Building 4 Qilai Industrial City, 889 Yishan Road, Shanghai, China 200233	China.
CSA Group Atlanta	6215 Shiloh Crossing, Building 100, Suite A, Alpharetta, GA 30005	United States.
CSA Group Taichung	2F.-5 No. 633, Sec. 2, Taiwan Blvd., Xitun District, Taichung City 407, Taiwan	Taiwan.
CSA Group Kunshan	Floor 1, Building 8, Tsinghua Science Park No. 1666, Zuchongzhi Road Kunshan, Jiangsu, China 215347.	China.
CSA Group Arnhem	Utrechtseweg 310, 6812 AR Arnhem, Netherlands	Netherlands.
CSA Group Guangzhou	No. 10, Ke Yan Road, Guangzhou Science Park, Huang Pu District, Guangzhou, China 510663.	Guangzhou.

TABLE 1—LIST OF TEST SITES TO BE INCLUDED IN CSA'S NRTL SCOPE OF RECOGNITION—Continued

CSA site name	Address	Country
CSA Group Frankfurt	Weismullerstr. 45, 60314 Frankfurt, Germany	Germany.

OSHA has preliminarily determined that it is appropriate to review this application under the SNAP Transition Policy. CSA's application was timely submitted under that policy, and OSHA preliminarily finds that the SNAP sites in CSA's application met all other preconditions of eligibility for conversion to recognized sites under the policy (See SNAP Termination Policy, part III 1.a–g, 85 FR at 75047). OSHA also preliminarily decided that it was not necessary to conduct on-site reviews in connection with CSA's expansion application, based on historical assessment records and supporting documentation submitted by CSA. Moreover, OSHA staff performed assessments of several CSA facilities included in the SNAP conversion application from June 2020 to November 2022, and, while assessors found some nonconformances with the requirements of 29 CFR 1910.7, CSA addressed these issues sufficiently. OSHA staff has preliminarily determined that OSHA should grant the application and grant recognition to the sixteen sites requested in the application.

III. Preliminary Finding on the Application

CSA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application files and pertinent documentation indicates that CSA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of the sixteen additional test sites for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of CSA's application.

OSHA seeks public comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether CSA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a

request for an extension if it is not adequately justified.

To review copies of the exhibit identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA–2006–0042 (for further information, see the “Docket” heading in the section of this notice titled ADDRESSES).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant CSA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 9, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023–17426 Filed 8–14–23; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

TUV Rheinland of North America, Inc.: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of TUV Rheinland of North America, Inc., for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 30, 2023.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at <https://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2007–0042). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website.

All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before August 30, 2023 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: meilinger.francis2@dol.gov.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693-2300 or email: robinson.kevin@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice that TUV Rheinland of North America, Inc. (TUVRNA), is applying for an expansion of current recognition as a NRTL. TUVRNA requests the addition of four test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition, as well as for an expansion or renewal of recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the

preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVRNA, which details that NRTL's scope of recognition. These pages are available from the OSHA website at <https://www.osha.gov/dts/otpca/nrtl/index.html>.

TUVRNA currently has ten facilities (sites) recognized by OSHA for product testing and certification, with the headquarters located at: TUV Rheinland of North America, Inc., 295 Foster Street, Suite 100, Littleton, Massachusetts 01460. A complete list of TUVRNA sites recognized by OSHA is available at <https://www.osha.gov/nationally-recognized-testing-laboratory-program/tuv>.

II. General Background on the Application

TUVRNA submitted an application, dated June 3, 2021 (OSHA-2007-0042-0068), to expand recognition as a NRTL to include four additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1 shows the test standards found in TUVRNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 355	Electric Cord Reels.
UL 498A	Current Taps and Adapters.
UL 1977	Component Connectors for Use in Data, Signal, Control and Power Applications.
UL 2438	Outdoor Seasonal-Use Cord-Connected Wiring Devices.

III. Preliminary Finding on the Application

TUVRNA submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation preliminarily indicates that TUVRNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these four test standards shown in Table 1, above, for NRTL testing and certification. This preliminary finding does not constitute an interim or temporary approval of TUVRNA's application.

OSHA seeks public comment on this preliminary determination.

V. Public Participation

OSHA welcomes public comment as to whether TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a

request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at <https://www.regulations.gov> under Docket No. OSHA-2007-0042 (for further information, see the "Docket" heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues

raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant TUVRNA's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

VI. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 8, 2023.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2023-17428 Filed 8-14-23; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences

Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Biological Sciences (#1110) (Hybrid Meeting)

Date and Time: September 13, 2023, 10:00 a.m.–5:00 p.m. Eastern; September 14, 2023, 10:00 a.m.–3:00 p.m. Eastern.

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

The meeting will be held as a hybrid, with some Advisory Committee members participating in person and others participating virtually. For members of NSF and the external community, livestreaming will be accessible through the following pages: September 13, 2023: <https://youtube.com/watch?v=gMmpDtRtGmw> September 14, 2023: <https://youtube.com/watch?v=LkY7FpSibOE>

Additional sub-links for planned breakout sessions will be forthcoming on the BIO AC website prior to the meeting at: <https://www.nsf.gov/bio/advisory.jsp>.

Type of Meeting: Open.

Contact Persons: Dr. Karen C. Cone, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292-4967; Email: kccone@nsf.gov.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences (BIO) provides advice and recommendations concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Summary of Minutes: Minutes will be available on the BIO Advisory Committee website at <https://www.nsf.gov/bio/advisory.jsp> or can be obtained from the contact person listed above.

Agenda: Agenda items will include: a Directorate business update; report out of Committee of Visitors Report for BIO/ Division of Environmental Biology and AC vote to accept the report; overview of the report, *'Bold Goals for U.S. Biotechnology and Biomanufacturing; Harnessing Research and Development to Further Societal Goals'*; AC Discussion of Opportunities and Bottlenecks for Advancing the Bioeconomy; overview of NSF and BIO's Research Infrastructure to Support the Bioeconomy followed by AC discussion of research infrastructure needs; overview of the report *'Building the Bioworkforce of the Future: Expanding Equitable Pathways into Biotechnology and Biomanufacturing Jobs'*; AC Discussion of Opportunities, Gaps, and Bottlenecks for Building the Bioeconomy-relevant Workforce of the Future; discussion with the NSF Director and Chief Operating Officer; and other directorate matters.

Dated: August 10, 2023.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2023-17509 Filed 8-14-23; 8:45 am]

BILLING CODE 7555-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34984; File No. 813-00408]

Apollo Global Management, Inc.

August 10, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order ("Order") under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except sections 9, 17, 30, and 36 through 53, and the rules and regulations under the Act (the "Rules and Regulations"). With respect to sections 17(a), (d), (e), (f), (g), and (j) of the Act, sections 30(a), (b), (e), and (h) of the Act and the Rules and Regulations and rule 38a 1 under the Act, applicants request a limited exemption as set forth in the application.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships, limited liability companies, corporations, business or statutory trusts or other entities ("Partnership") formed for the benefit of eligible employees of Apollo Global Management, Inc. and its affiliates from certain provisions of the Act. Each Partnership, and each series thereof (to the extent such series is an issuer for purposes of the Act), will be an "employees' securities company" within the meaning of section 2(a)(13) of the Act.

APPLICANT: Apollo Global Management, Inc.

FILING DATES: The application was filed on May 16, 2022 and amended on November 2, 2022, April 13, 2023, July 19, 2023, and July 28, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on September 5, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicant: Dennis Pereira, dpereira@akingump.com.

FOR FURTHER INFORMATION CONTACT: Jessica D. Leonardo, Senior Counsel, or Marc Mehrespand, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' fourth amended and restated application, dated July 28, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system.

The SEC's EDGAR system may be searched at, <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-17497 Filed 8-14-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98095; File No. SR-SCCP-2023-01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Stockholders' Agreement by and Among Nasdaq, Inc., Adenza Parent, LP, and the Other Parties Thereto

August 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 28, 2023, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of the Proposed Rule Change

SCCP is filing a proposed rule change regarding a stockholders' agreement by

and among the Exchange's parent corporation, Nasdaq, Inc. ("Nasdaq"), Adenza Parent, LP, a Delaware limited partnership ("Seller"), and the other parties thereto ("Stockholders' Agreement"). The Stockholders' Agreement will be implemented upon closing under the Merger Agreement (as defined below).

The text of the proposed rule change is available on the SCCP's website at <https://listingcenter.nasdaq.com/rulebook/sccp/rules>, at the principal office of SCCP, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2023, Nasdaq entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among Nasdaq, Argus Merger Sub 1, Inc., a Delaware corporation and a direct wholly owned subsidiary of Nasdaq, Argus Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Nasdaq, Adenza Holdings, Inc., a Delaware corporation ("Adenza"), and Seller. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Nasdaq will acquire 100% of the stock of Adenza (the "Transaction"). As a result of the Transaction, Seller is expected to hold, at closing, approximately 15% of the outstanding Nasdaq common stock based upon the outstanding shares of Nasdaq common stock as of June 9, 2023.³ The shares to be held by Seller will be subject to Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, which provides that no person who beneficially owns shares of common

stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries (including SCCP), and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

Adenza and Seller are affiliates of certain funds managed by Thoma Bravo, L.P., a Delaware limited partnership ("Thoma Bravo").⁴ The Merger Agreement contemplates that, at the closing, Nasdaq, Seller and Thoma Bravo will enter into the Stockholders' Agreement. The Stockholders' Agreement provides that, among other things, Thoma Bravo will be entitled to propose one individual reasonably acceptable to Nasdaq's Nominating & Governance Committee for nomination as director for election to the Nasdaq Board ("Board Designee"), and such right will exist for so long as Thoma Bravo, together with its controlled affiliates (including Seller), continue to beneficially own at least 10% of the shares of Nasdaq common stock outstanding as of the closing date. Nasdaq will: (i) include the Board Designee as a nominee to the Nasdaq Board on each slate of nominees for election to the Nasdaq Board proposed by management of Nasdaq, (ii) recommend the election of the Board Designee to the stockholders of Nasdaq and (iii) without limiting the foregoing, otherwise use its reasonable best efforts (which shall include the solicitation of proxies) to cause the Board Designee to be elected to the Nasdaq Board.

The Stockholders' Agreement relates solely to the Nasdaq Board, and not to the boards of any of its subsidiaries, including the SCCP Board. Nevertheless, the provisions of the Stockholders' Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization ("SRO"), if the provisions were viewed as potentially impacting the governance of an SRO in its capacity as wholly-owned subsidiary of Nasdaq. Accordingly, the governing boards of directors of SCCP and its affiliated SROs have each reviewed the proposed change and determined that it should be filed with the Commission.⁵

⁴ Seller owns all of the issued and outstanding capital stock of Adenza. Both Seller and Adenza are owned by Thoma Bravo.

⁵ SCCP, Nasdaq BX, Inc. ("BX"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), The Nasdaq Stock Market LLC

Continued

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A copy of the Merger Agreement and a description of its terms were filed by Nasdaq on Form 8-K on June 12, 2023 and are available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001120193/000119312523164839/d476077d8k.htm>.

It is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, the composition of which is subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605.⁶ The Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

2. Statutory Basis

SCCP believes that its proposal is consistent with section 17A(b)(3)(A) of the Act,⁷ in that it enables SCCP to be so organized as to have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce compliance by its participants with the rules of SCCP, and to carry out the purposes of the Exchange Act.

The proposal related to the Stockholders' Agreement would not impact SCCP's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation,

("NSM"), Nasdaq PHLX LLC ("Phlx"), and Boston Stock Exchange Clearing Corporation ("BSECC") are each submitting this filing pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ Section 4.13 of the Nasdaq By-Laws provide that the Nominating & Governance Committee shall be appointed annually by the Nasdaq Board and shall consist of two or more directors, each of whom shall be an independent director within the meaning of the rules of NSM. The number of Non-Industry Directors (i.e., directors without material ties to the securities industry) on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors and at least two members of the committee shall be Public Directors (i.e., directors who have no material business relationship with a broker or dealer, Nasdaq or its affiliates, or FINRA). NSM Rule 5605, which governs Nasdaq as a company whose securities are listed on NSM, requires Nominating & Governance Committee members to satisfy the definition of "independence" in NSM Rule 5605 and IM-5605 and to otherwise be deemed independent by the Nasdaq Board.

⁷ 15 U.S.C. 78q-1(b)(3)(A).

and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or SCCP to effectively carry out their regulatory oversight responsibilities under the Act. Further, as discussed above, it is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, whose members are subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605. Further, the Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

SCCP also notes that the proposed rule change is substantially similar to prior proposals by SCCP or its affiliated SROs related to Nasdaq stockholders' agreements that gave similar rights to recommend Nasdaq Board designees.⁸ As such, SCCP does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Clearing Agency's Statement on Burden on Competition

Because the proposed rule change is related solely to Thoma Bravo's right to nominate the Board Designee to the Nasdaq Board pursuant to the Stockholders' Agreement and not to the operations of SCCP, SCCP does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

⁸ See Securities Exchange Act Release No. 57099 (January 4, 2008), 73 FR 1901 (January 10, 2008) (SR-NASDAQ-2008-002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement Between the Nasdaq Stock Market, Inc. and Borse Dubai Limited). See also Securities Exchange Act Release No. 63830 (February 3, 2011), 76 FR 7236 (February 9, 2011) (SR-BSECC-2011-001; SR-SCCP-2011-001) (Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to a Stockholders' Agreement Between the NASDAQ OMX Group, Inc. and Investor AB).

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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ of the Act normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to 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 contained in Rule 19b-4(f)(6)(iii).¹³ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as the proposal raises no new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. SCCP has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SCCP-2023-01 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-SCCP-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 (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-SCCP-2023-01 and should be submitted on or before September 4, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-17443 Filed 8-14-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98094; File No. SR-BSECC-2023-001]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Stockholders' Agreement By and Among Nasdaq, Inc., Adenza Parent, LP, and the Other Parties Thereto

August 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 28, 2023, Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by BSECC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of the Proposed Rule Change

BSECC is filing a proposed rule change regarding a stockholders' agreement by and among the Exchange's parent corporation, Nasdaq, Inc. ("Nasdaq"), Adenza Parent, LP, a Delaware limited partnership ("Seller"), and the other parties thereto ("Stockholders' Agreement"). The Stockholders' Agreement will be implemented upon closing under the Merger Agreement (as defined below).

The text of the proposed rule change is available on BSECC's website at <https://listingcenter.nasdaq.com/rulebook/bsecc/rules>, at the principal office of BSECC, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSECC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 10, 2023, Nasdaq entered into an Agreement and Plan of Merger (the "Merger Agreement") by and among Nasdaq, Argus Merger Sub 1, Inc., a Delaware corporation and a direct wholly owned subsidiary of Nasdaq, Argus Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of Nasdaq, Adenza Holdings, Inc., a Delaware corporation ("Adenza"), and Seller. Pursuant to the Merger Agreement, and upon the terms and subject to the conditions therein, Nasdaq will acquire 100% of the stock of Adenza (the "Transaction"). As a result of the Transaction, Seller is expected to hold, at closing, approximately 15% of the outstanding Nasdaq common stock based upon the outstanding shares of Nasdaq common stock as of June 9, 2023.³ The shares to be held by Seller will be subject to Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, which provides that no person who beneficially owns shares of common stock or preferred stock of Nasdaq in excess of 5% of the then-outstanding securities generally entitled to vote may vote the shares in excess of 5%. This limitation mitigates the potential for any Nasdaq shareholder to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries (including BSECC), and facilitates the self-regulatory subsidiaries' and the Commission's ability to carry out their regulatory obligations under the Act.

Adenza and Seller are affiliates of certain funds managed by Thoma Bravo, L.P., a Delaware limited partnership ("Thoma Bravo").⁴ The Merger Agreement contemplates that, at the closing, Nasdaq, Seller and Thoma Bravo will enter into the Stockholders' Agreement. The Stockholders' Agreement provides that, among other things, Thoma Bravo will be entitled to propose one individual reasonably acceptable to Nasdaq's Nominating & Governance Committee for nomination as director for election to the Nasdaq Board ("Board Designee"), and such right will exist for so long as Thoma

³ A copy of the Merger Agreement and a description of its terms were filed by Nasdaq on Form 8-K on June 12, 2023 and are available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/0001120193/000119312523164839/d476077d8k.htm>.

⁴ Seller owns all of the issued and outstanding capital stock of Adenza. Both Seller and Adenza are owned by Thoma Bravo.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁵ 17 CFR 200.30-3(a)(12).

Bravo, together with its controlled affiliates (including Seller), continue to beneficially own at least 10% of the shares of Nasdaq common stock outstanding as of the closing date. Nasdaq will: (i) include the Board Designee as a nominee to the Nasdaq Board on each slate of nominees for election to the Nasdaq Board proposed by management of Nasdaq, (ii) recommend the election of the Board Designee to the stockholders of Nasdaq and (iii) without limiting the foregoing, otherwise use its reasonable best efforts (which shall include the solicitation of proxies) to cause the Board Designee to be elected to the Nasdaq Board.

The Stockholders' Agreement relates solely to the Nasdaq Board, and not to the boards of any of its subsidiaries, including the BSECC Board. Nevertheless, the provisions of the Stockholders' Agreement described above could be considered a proposed rule change of a subsidiary that is a self-regulatory organization ("SRO"), if the provisions were viewed as potentially impacting the governance of an SRO in its capacity as wholly-owned subsidiary of Nasdaq. Accordingly, the governing boards of directors of BSECC and its affiliated SROs have each reviewed the proposed change and determined that it should be filed with the Commission.⁵

It is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, the composition of which is subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605.⁶ The Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is

expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

2. Statutory Basis

BSECC believes that its proposal is consistent with section 17A(b)(3)(A) of the Act,⁷ in that it enables BSECC to be so organized as to have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of the Exchange Act and the rules and regulations thereunder, to enforce compliance by its participants with the rules of BSECC, and to carry out the purposes of the Exchange Act.

The proposal related to the Stockholders' Agreement would not impact BSECC's ability to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act. In particular, the proposed changes would not alter the limitations on voting and ownership set forth in Article Fourth of Nasdaq's Amended and Restated Certificate of Incorporation, and so the proposed changes would not enable a person to exercise undue control over the operations of Nasdaq's self-regulatory subsidiaries or to restrict the ability of the Commission or BSECC to effectively carry out their regulatory oversight responsibilities under the Act. Further, as discussed above, it is expected that the Board Designee, like the other directors of the Nasdaq Board, would be nominated by the Nominating & Governance Committee, whose members are subject to the independence requirements of the Nasdaq By-Laws and NSM Rule 5605. Further, the Board Designee must then be elected by the stockholders of Nasdaq, like the other directors of the Nasdaq Board. The Nasdaq Board is currently composed of 11 directors and is expected to increase to 12 directors upon the closing of the Transaction. Thus, the Board Designee would represent a small percentage (approximately 8.3%) of the Nasdaq Board.

BSECC also notes that the proposed rule change is substantially similar to prior proposals by BSECC or its affiliated SROs related to Nasdaq stockholders' agreements that gave similar rights to recommend Nasdaq

Board designees.⁸ As such, BSECC does not believe that its proposal raises any new or novel issues not already considered by the Commission.

B. Clearing Agency's Statement on Burden on Competition

Because the proposed rule change is related solely to Thoma Bravo's right to nominate the Board Designee to the Nasdaq Board pursuant to the Stockholders' Agreement and not to the operations of BSECC, BSECC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days 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 Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ of the Act normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹² permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the

⁵ BSECC, Nasdaq BX, Inc. ("BX"), Nasdaq GEMX, LLC ("GEMX"), Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), The Nasdaq Stock Market LLC ("NSM"), Nasdaq PHLX LLC ("Phlx"), and Stock Clearing Corporation of Philadelphia ("SCCP") are each submitting this filing pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ Section 4.13 of the Nasdaq By-Laws provide that the Nominating & Governance Committee shall be appointed annually by the Nasdaq Board and shall consist of two or more directors, each of whom shall be an independent director within the meaning of the rules of NSM. The number of Non-Industry Directors (*i.e.*, directors without material ties to the securities industry) on the Nominating & Governance Committee shall equal or exceed the number of Industry Directors and at least two members of the committee shall be Public Directors (*i.e.*, directors who have no material business relationship with a broker or dealer, Nasdaq or its affiliates, or FINRA). NSM Rule 5605, which governs Nasdaq as a company whose securities are listed on NSM, requires Nominating & Governance Committee members to satisfy the definition of "independence" in NSM Rule 5605 and IM-5605 and to otherwise be deemed independent by the Nasdaq Board.

⁷ 15 U.S.C. 78q-1(b)(3)(A).

⁸ See Securities Exchange Act Release No. 57099 (January 4, 2008), 73 FR 1901 (January 10, 2008) (SR-NASDAQ-2008-002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Nasdaq Stockholders' Agreement Between the Nasdaq Stock Market, Inc. and Borse Dubai Limited). See also Securities Exchange Act Release No. 63830 (February 3, 2011), 76 FR 7236 (February 9, 2011) (SR-SCCP-2011-001; SR-BSECC-2011-001) (Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to a Stockholders' Agreement Between the NASDAQ OMX Group, Inc. and Investor AB).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. BSECC has satisfied this requirement.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

Commission to waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii).¹³ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as the proposal raises no new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BSECC-2023-001 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-BSECC-2023-001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-BSECC-2023-001 and should be submitted on or before September 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-17442 Filed 8-14-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98096; File No. SR-ISE-2023-16]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Accelerate the Listing of Options on Certain IPOs

August 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 4, 2023, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Options 4, Section 3, Criteria For Underlying Securities. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 4, Section 3, Criteria For Underlying Securities. ISE is proposing a listing rule change that is substantially similar in all material respects to the proposal approved for NYSE American LLC ("NYSE American").³ Following discussions with other exchanges and a cross-section of industry participants and in coordination with the Listed Options Market Structure Working Group ("LOMSWG") (collectively, the "Industry Working Group"), NYSE American filed a proposed rule change,⁴ which was recently approved, to modify the standard for the listing and trading of options on "covered securities" to reduce the time to market in Rule 915 (Criteria for Underlying Securities). At this time, ISE proposes to adopt an identical rule.

Proposal

ISE Options 4, Section 3(b)(5) sets forth the guidelines to be considered in evaluating for option transactions

³ See Securities Exchange Act Release No. 98013 (July 27, 2023) 88 FR 50927 (August 2, 2023) (SR-NYSEAMER-2023-27) (Order Granting Approval of a Proposed Rule Change to Amend Rule 915 (Criteria for Underlying Securities) to Accelerate the Listing of Options on Certain IPO).

⁴ *Id.*

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

underlying securities that are “covered securities,” as defined in section 18(b)(1)(A) of the Securities Act of 1933 (hereinafter “covered security” or “covered securities”).⁵ Currently, the Exchange permits the listing of an option on an underlying covered security that, amongst other things, has a market price of at least \$3.00 per share for the previous three consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation (“OCC”) to list and trade options on the underlying security (the “three-day lookback period”).⁶ Under the current rule, if an initial public offering (“IPO”) occurs on a Monday, the earliest date the Exchange could submit its listing certificate to OCC would be on Thursday, with the market price determined by the closing price over the three-day lookback period from Monday through Wednesday. The option on the IPO’d security would then be eligible for trading on the Exchange on Friday (*i.e.*, within four business days of the IPO inclusive of the day the listing certificate is submitted to OCC).

The Exchange notes that the three-day lookback period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities—well above the \$3.00 per share threshold—that would obviate the need for the three-day lookback period. In this regard, NYSE American noted in its rule change that the Industry Working Group identified proposed changes that would help options on covered securities that have a market capitalization of at least \$3 billion based upon the offering price of its IPO come to market earlier.⁷ The proposed change, which is intended to be harmonized across options exchanges, is designed to provide investors the opportunity to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted.⁸ The Exchange believes that

options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility in the trading of IPO’d securities.⁹

Accordingly, the Exchange proposes to modify Options 4, Section 3 to waive the three-day lookback period for covered securities that have a market capitalization of at least \$3 billion based upon the offering price of the IPO of such securities and to allow options on such securities to be listed and traded starting on or after the second business day following the initial public offering day (*i.e.*, not inclusive of the day of the IPO).¹⁰ NYSE American noted in its rule change that it reviewed trading data for IPO’d securities dating back to 2017 and is unaware of any such security that achieved a market capitalization of \$3 billion based upon the offering price of its IPO that would not have also qualified for listing options based on the three-day lookback requirement.¹¹ Specifically, NYSE American stated in its rule change that it determined that 202 of the 1,179 IPOs that took place between January 1, 2017, and October 21, 2022, met the \$3 billion market capitalization/IPO offering price threshold.¹² Further, NYSE American stated that options on all 202 of those IPO shares subsequently satisfied the three-day lookback requirement for listing and trading, *i.e.*, none of these large IPOs closed below the \$3.00/share threshold during its first three days of its trading.¹³ As such, the Exchange believes the proposed capitalization threshold of \$3 billion based upon the offering price of its IPO is appropriate.

Under the proposed rule, if an IPO for a company with a market capitalization

of \$3 billion based upon the offering price of its IPO occurs on a Monday, the Exchange could submit its listing certificate to OCC (to list and trade options on the IPO’d security) as soon as all the other requirements for listing are satisfied. If, on Tuesday, all requirements are deemed satisfied, the IPO’d security could then be eligible for trading on the Exchange on Wednesday (*i.e.*, starting on or after the second business day following the IPO day). Thus, the proposal could potentially accelerate the listing of options on IPO’d securities by two days.

The Exchange believes the proposed change would allow options on IPO’d securities to come to market sooner without sacrificing investor protection. The Exchange represents that trading in IPO’d securities—like all other securities traded on the Exchange—is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.¹⁴ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO’d securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.¹⁵ As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with its findings related to the IPOs reviewed as described herein, adequately address potential concerns regarding possible manipulation or price stability.

Implementation

The proposed rule change will become operative within six months following the approval of the proposed Rule change to coincide with implementation on other options exchanges. The Exchange will announce the effective date of the proposed change by an Options Trader Update. The Exchange will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b)

⁵ Options 4, Section 3(a) requires that, for underlying securities to be eligible for option transactions, such securities must be duly registered and be an “NMS stock” as defined in Rule 600 of Regulation NMS under the Act and will be characterized by a substantial number of outstanding shares which are widely held and actively traded. See Options 4, Section 3(a)(1) and (2).

⁶ See Options 4, Section 3(b)(5)(i). The Exchange is not proposing to make any changes to the guidelines for listing securities that are not a “covered security.” See Options 4, Section 3(b)(5)(ii).

⁷ See *supra* note 3.

⁸ While the Exchange acknowledges that market participants may utilize options for speculative

purposes (in addition to as a hedging tool), the Exchange believes (as set forth below) that its existing surveillance technologies and procedures adequately address potential violations of exchange rules and federal securities laws applicable to trading on the Exchange.

⁹ See proposed Options 4, Section 3(b)(5)(i)(B). The Exchange proposes a non-substantive change to number the existing and proposed criteria for covered securities as (A) and (B) of paragraph (b)(5)(i). See proposed Options 4, Section 3(b)(5)(i).

¹⁰ The Exchange acknowledges that the Options Listing Procedures Plan (or “OLPP”) requires that the listing certificate be provided to OCC no earlier than 12:01 a.m. and no later than 11:00 a.m. (Chicago time) on the trading day prior to the day on which trading is to begin. See the OLPP, at p. 3, available here: https://www.theocc.com/getmedia/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/options_listing_procedures_plan.pdf. The OLPP is a national market system plan that, among other things, sets forth procedures governing the listing of new options series.

¹¹ See *supra* note 3.

¹² See *supra* note 3.

¹³ See *supra* note 3.

¹⁴ 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.

¹⁵ See *supra* note 8.

of the Act,¹⁶ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed change would facilitate options transactions and would remove impediments to and perfect the mechanism of a free and open market and a national market system, which would, in turn, protect investors and the public interest by providing an avenue for options on IPO'd securities to come to market earlier. The Exchange notes that the three-day look back period helps ensure that options on underlying securities may be listed and traded in a timely manner while also allowing time for OCC to accommodate the certification request. However, there are certain large IPOs that issue high-priced securities—well above the \$3.00 per share threshold—that would obviate the need for the three-day lookback period. As noted above, NYSE American noted that it reviewed trading data for IPO'd securities dating back to 2017 and was unaware of an IPO'd security with a market capitalization of \$3 billion or more (based upon the offering price of its IPO) that subsequently would have failed to qualify for listing and trading as options under the three-day lookback requirement.¹⁸ The Exchange believes that the proposed amendment, which would be harmonized across options exchanges, would remove impediments to and perfect the mechanism of a free and open market and a national market system by providing an avenue for investors to hedge their interest in IPO investments in a shorter amount of time than what is currently permitted. The Exchange believes that options serve a valuable tool to the trading community and help markets function efficiently by mitigating risk. To that end, the Exchange believes that the absence of options in the early days after an IPO may heighten volatility to IPO'd securities.¹⁹

Further, as noted herein, the Exchange believes the proposed change

would allow options on IPO'd securities to come to market sooner (*i.e.*, at least two business days post-IPO not inclusive of the day of the IPO) without sacrificing investor protection. The Exchange represents that trading in IPO'd securities—like all other securities traded on the Exchange—is subject to surveillances administered by the Exchange and to cross-market surveillances administered by FINRA on behalf of the Exchange. Those surveillances are designed to detect violations of Exchange rules and applicable federal securities laws.²⁰ The Exchange represents that those surveillances are adequate to reasonably monitor Exchange trading of IPO'd securities in all trading sessions and to reasonably deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange, including wrongful efforts to manipulate the prices of those securities in order to bring them in compliance with the \$3.00/share threshold for the listing of options. As such, the Exchange believes that its existing surveillance technologies and procedures, coupled with NYSE American's findings related to the IPOs reviewed as described herein, would adequately address potential concerns regarding possible manipulation or price stability.

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 anticipates that the other options exchanges will adopt substantively similar proposals, such that there would be no burden on intermarket competition from the Exchange's proposal. Accordingly, the proposed change is not meant to affect competition among the options exchanges. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and does not impose any undue burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

²⁰ 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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²⁴ permits the Commission to 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 Exchange states that this proposed rule change is substantially similar in all material respects to a proposal submitted by NYSE American that was recently approved by the Commission.²⁵ The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. The Exchange represents that it will coordinate the effective date to coincide with the implementation of the proposed change on the other options exchanges. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ *Id.*

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁵ See *supra* note 3.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ See *supra* note 3.

¹⁹ See *supra* note 8.

to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2023-16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2023-16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2023-16 and should be submitted on or before September 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-17444 Filed 8-14-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98093; File No. SR-OCC-2023-006]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Concerning Amendments to The Options Clearing Corporation's Capital Management Policy and Cash and Investment Management Policy

August 9, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 3, 2023, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would make certain administrative and clarifying amendments to OCC's Capital Management Policy and Cash and Investment Management Policy. Specifically, the proposed changes would: (1) provide that Management will, at a minimum, review OCC's fee schedule at each regularly scheduled Compensation and Performance Committee ("CPC") meeting, consistent with recent updates to the OCC's Board of Director ("Board") and Board-level committee ("Committee") charters, which require each Committee meet at

least four times per year, rather than quarterly as the Capital Management Policy currently provides; (2) make certain other edits and additions to the Capital Management Policy for clarity and consistency with OCC's other policies, and (3) amend the Cash and Investment Management Policy to better align the text of that policy to OCC Rules 604(a) and 1002(c), which provide separate treatment for cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively.

The proposed changes are included in confidential Exhibit 5 to File No. SR-OCC-2023-006. Material proposed to be added is underlined and material proposed to be deleted is marked in strikethrough text. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in OCC's By-Laws and Rules.⁵

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, and with respect to OCC's clearance and settlement of futures and stock loan transactions, OCC maintains policies and procedures to manage the risks borne by OCC as a central counterparty. One such risk that OCC manages is general business risk—that is, the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. In order to manage this risk and help to ensure that OCC can continue operations and services as a going concern if general business losses materialize, OCC has filed, and the Commission has approved,⁶ OCC's

²⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

⁵ OCC's current By-Laws and Rules can be found on OCC's public website: <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

⁶ See Order Approving Proposed Rule Change to Establish OCC's Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27,

Capital Management Policy, which provides the framework by which OCC manages its capital and plans for replenishment of capital if necessary. Other risks OCC manages include custody and investment risk. To manage risks associated with holding and investing OCC's own cash and the cash collected from Clearing Members,⁷ OCC has filed, and the Commission has approved,⁸ OCC's Cash and Investment Management Policy.

Regulations applicable to OCC require such risk management policies to be reviewed on a specified periodic basis and approved by the Board annually.⁹ Through annual reviews of its Capital Management Policy in 2021 and its Cash and Investment Management Policy in 2022, OCC's management recommended, and the Board approved, certain administrative and clarifying amendments to the Capital Management Policy and Cash and Investment Management Policy. This proposed rule change primarily aims to align the Capital Management Policy to the already revised cadence of meetings reflected in the CPC charter, as well as to make administrative edits, including textual revisions to clarify meaning, a typographical correction, and a description conforming to OCC's current

template¹⁰ format. With respect to the Cash and Investment Management Policy, this proposed rule change would better align that policy's text with OCC's Rules 604(a) and 1002(c), which provide separate treatment for cash deposited by Clearing Members in respect of margin requirements and Clearing Fund deposits, respectively. This proposed rule change would not alter other practices and procedures described in the Capital Management Policy and the Cash and Investment Management Policy and would not alter the rights or obligations of Clearing Members or other market participants. Accordingly, OCC does not believe such administrative changes to OCC's internal policies would have any effect on Clearing Members or other market participants.

(1) Purpose

OCC is proposing to make certain administrative and clarifying amendments to OCC's Capital Management Policy, and Cash and Investment Management Policy identified and approved by the Board as part of the annual review of such policies. Specifically, as discussed in more detail below, the proposed changes to the Capital Management Policy would: (1) provide that Management will, at a minimum, review the fee schedule at each regularly scheduled CPC meeting, rather than quarterly, which would align the frequency of such reviews with recent updates to the Board and Committee charters that require each Committee to meet at least four times per year, not necessarily quarterly;¹¹ and (2) make certain other administrative edits and additions for clarity and consistency with OCC's other policies, including to (i) clarify the ways in which OCC may hold additional financial resources for capital needs, (ii) modify verbiage to avoid confusion with concepts addressed by other OCC rules, and (iii) conform the Capital Management Policy to OCC's current template¹² for its rule-

filed policies. The proposed changes to the Cash and Investment Management Policy would clarify that interest earned on Clearing Fund cash, as opposed to margin cash, held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee, consistent with OCC Rule 1002(c) and the intended meaning of the Cash and Investment Management Policy as expressed in the rule filing that established that policy.¹³ Interest or gain on investment of margin cash would continue to accrue to OCC in accordance with existing OCC Rule 604(a).

Background

Capital Management Policy

Under the Capital Management Policy, OCC determines its Target Capital Requirement, monitors its levels of shareholders' equity ("Equity") and liquid net assets funded by equity ("LNAFBE") to help ensure adequate financial resources are available for general business obligations, and manages Equity levels, including by adjusting OCC's fee schedule as appropriate and establishing a plan for accessing additional capital should OCC's Equity fall below certain thresholds (the "Replenishment Plan").¹⁴ In addition, OCC's Rules¹⁵ and Capital Management Policy¹⁶ provide for OCC's skin-in-the-game, including a Minimum Corporate Contribution¹⁷ and the use of LNAFBE in excess of 110% of the Target Capital Requirement (*i.e.*, the "Early Warning"¹⁸ threshold under OCC's

adoption of a section in OCC's Risk Management Framework that uniformly covered those processes); Exchange Act Release No. 93436 (Oct. 27, 2021), 86 FR 60499, 60500 (Nov. 2, 2021) (SR-OCC-2021-010) (removing non-substantive items from OCC's rule-filed policies, including repeated document titles, certain introductory information, related policies and standards, related procedures, and revision history).

¹³ See *infra* note 25 and accompanying text.

¹⁴ See Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5501-03 (Jan. 30, 2020) (SR-OCC-2019-007).

¹⁵ See OCC Rule 1006(e)(i).

¹⁶ See Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR-OCC-2021-003) (order approving changes to OCC's Capital Management Policy and OCC Rule 1006(e) to establish OCC's persistent minimum skin-in-the-game).

¹⁷ OCC Rule 101(M)(1) defines the term "Minimum Corporate Contribution" to mean the minimum level of OCC funds maintained exclusively to cover credit losses or liquidity shortfalls. The Minimum Corporate Contribution is determined by the Board from time to time.

¹⁸ The Capital Management Policy defines "Early Warning" as when Equity less the Minimum Corporate Contribution falls below 110% of the Target Capital Requirement. Management reviews

Continued

2021), 86 FR 29861 (June 3, 2021) (SR-OCC-2021-003); Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (SR-OCC-2019-007); see also Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194 (Oct. 15, 2019) (SR-OCC-2019-805).

⁷ OCC's investment of collateral deposited by Clearing Members is limited to the investment of margin cash in overnight reverse repurchase transactions in U.S. Government securities. See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1820 (Jan. 12, 2022) (SR-OCC-2021-014). OCC's management of risks related to holding non-cash collateral deposited by Clearing Members is addressed in other policies and procedures, including OCC's Collateral Risk Management Policy. See, e.g., Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252 (Dec. 19, 2017) (SR-OCC-2017-008) (approving OCC's Collateral Risk Management Policy).

⁸ See Order Granting Approval of Proposed Rule Change Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (SR-OCC-2021-014); see also Notice of No Objection to Advance Notice Concerning the Option Clearing Corporation's Cash and Investment Management, Exchange Act No. 94270 (Feb. 17, 2022), 87 FR 10262 (Feb. 23, 2022) (SR-OCC-2021-803).

⁹ See 17 CFR 240.17Ad-22(e)(3)(i).

¹⁰ See *infra* note 12.

¹¹ See Exchange Act Release No. 94988 (May 26, 2022), 87 FR 33535, 33537-8 (June 2, 2022) (SR-OCC-2022-002); see also CPC Charter, Section II.B, available at <https://www.theocc.com/company-information/documents-and-archives/board-charters> ("The Committee shall meet at least four times a year.").

¹² "Template" here refers to the format and organizational structure for OCC's internal policies. Previous OCC filings have made similar changes across other policies to conform them to OCC's standard template. See, e.g., Exchange Act Release No. 96566 (Dec. 22, 2022), 87 FR 80207, 80210 (Dec. 29, 2022) (SR-OCC-2022-010) (approving conforming changes across risk policies to remove policy-specific sections concerning policy exceptions and violations in connection with

Replenishment Plan) to cover losses arising from a Clearing Member's default.

Target Capital Requirement

Pursuant to the Capital Management Policy, the Target Capital Requirement is based on two components: (1) the amount of LNAFBE determined by OCC to be necessary to ensure compliance with OCC's regulatory obligations, including Rule 17Ad-22(e)(15) under the Exchange Act¹⁹ and (2) any additional amounts determined to be necessary and appropriate for capital expenditures approved by OCC's Board.²⁰ With respect to the first component, OCC must set its Target Capital Requirement at a level sufficient to maintain LNAFBE at least equal to the greater of: (1) six months of OCC's current operating expenses, (2) the amount determined by the Board to be sufficient to ensure a recovery or orderly wind-down of critical operations and services ("RWD Amount"),²¹ and (3) the amount determined by the Board to be sufficient for OCC to continue operations and services as a going concern if general business losses materialize. With respect to the second component, the Capital Management Policy authorizes the Board to increase the Target Capital Requirement by an amount to be retained for capital expenditures. Alternatively, the Board may determine to fund capital expenditures out of funds in excess of the Target Capital Requirement. In making such a determination, the Board would consider factors including, but not limited to, the amount of funding required, the amount of Equity proposed

the Early Warning threshold on an annual basis. See Exchange Act Release No. 88029, 85 FR at 5502.

¹⁹ 17 CFR 240.17Ad-22(e)(15).

²⁰ In setting the Target Capital Requirement, OCC considers, but is not bound by, its projected rolling twelve-months' operating expenses pursuant to OCC's interpretation of the Commodity Futures Trading Commission ("CFTC") Regulation 39.11(a)(2). See 17 CFR 39.11(a)(2). Unlike SEC Rule 17Ad-22(e)(15) and CFTC Regulation 39.11(e)(2), which concern the liquidity of the financial resources to meet six-months' of operating expenses, the financial resources OCC may count toward the CFTC's twelve-months' requirement is not limited to LNAFBE or "unencumbered, liquid financial assets." See 17 CFR 39.11(e)(2). OCC may count its "own capital" (*i.e.*, Equity) and "[a]ny other financial resource deemed acceptable by the [CFTC]" toward the twelve-months' requirement. See 17 CFR 39.11(b)(2). Accordingly, the Capital Management Policy does not require OCC to set its Target Capital Requirement—the amount of LNAFBE it must maintain to meet its regulatory obligations—to equal twelve-months' operating expenses.

²¹ Management recommends an RWD Amount calculated on an annual basis pursuant to the Capital Management Procedure based on the assumptions in OCC's Recovery and Orderly Wind-down Plan. See Exchange Act Release No. 88029, 85 FR at 5509.

to be retained, the potential impact of the investment on OCC's operations, and the duration of time over which funds would be accumulated.

On an annual basis, OCC's Chief Financial Officer ("CFO") recommends a Target Capital Requirement for the coming year to OCC management.²² Management reviews the CFO's recommendation and, as appropriate, recommends the Target Capital Requirement to the CPC. The CPC then reviews and, as appropriate, recommends the proposal to the Board, which reviews and, as appropriate, approves the Target Capital Requirement for the coming year.

Fee Schedule

OCC's fee structure is designed by the Board in accordance with Article IX, Section 9 of OCC's By-Laws. The current Capital Management Policy provides that, on a quarterly basis, management will review OCC's fee schedule and, considering factors including, but not limited to, projected operating expenses, projected volumes, anticipated cashflows and capital needs, recommend to the Board, or a Board-level Committee to which the Board has delegated authority,²³ whether a fee increase, decrease or waiver should be made. If OCC's Equity is above, in the aggregate, 110% of its Target Capital Requirement and other approved capital needs, the Board may use such tools as it determines appropriate to lower costs for Clearing Members, including lowering fees, fee holidays or refunds.²⁴ On an annual basis, management reviews the operating margin level and, considering historical volume variance and other relevant factors (including, but not limited to, variance in revenue other than from clearing fees, such as interest income), recommends to the Board, or a Committee to which the Board has delegated authority, whether any changes should be made to OCC's defined operating margin.

²² The CFO's recommendation is prepared in accordance with OCC's Capital Management Procedure, which provides additional detail supporting the Capital Management Policy. See Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44944, 44945 (Aug. 27, 2019) (SR-OCC-2019-007).

²³ The Board has delegated such authority to the CPC under the CPC Charter. See *supra* note 11.

²⁴ When determining which, if any, tools would be appropriate, the Board considers factors including, but not limited to, projecting future volume, expenses, cashflow, capital needs and the possibility and amount of unfunded obligations. During this process, Equity must always remain above the "Early Warning" threshold. See Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194, 55196 (Oct. 15, 2019) (SR-OCC-2019-805).

Cash and Investment Management Policy

Among other things, OCC's Cash and Investment Management Policy provides for how OCC may invest its own cash and cash deposited by Clearing Members in respect of margin requirements or Clearing Fund deposits. In recent filings, OCC explained that the policy would provide that "[i]nterest earned on *Clearing Fund* cash deposits held at a Federal Reserve Bank would accrue to the benefit of Clearing Members, less a cash management fee."²⁵ However, the proposed text of the policy submitted with the filing inadvertently did not qualify the scope as limited to Clearing Fund cash deposits. OCC Rule 1002(c) provides that interest on Clearing Fund cash deposits held at a Federal Reserve Bank accrue to Clearing Members less a cash management fee, consistent with the text of the policy.²⁶ In contrast, under OCC Rule 604(a), interest earned on investments of cash deposited by Clearing Members in respect of margin requirements accrues to the benefit of OCC.²⁷ No change to Rule 604(a) was intended by the proposed implementation of OCC's Cash and Investment Management Policy.²⁸

Proposed Changes

(1) Fee Schedule Review

Currently, the Capital Management Policy requires management to review the fee schedule with the CPC "[o]n a quarterly basis." The proposed changes would amend this language to instead

²⁵ See Exchange Act Release No. 93916 (Jan. 6, 2022), 87 FR 1819, 1821 (Jan. 12, 2022) (SR-OCC-2021-014); Exchange Act Release No. 93915 (Jan. 6, 2022), 87 FR 1814, 1815 (Jan. 12, 2022) (SR-OCC-2021-803) (emphasis added).

²⁶ See OCC Rule 1002(c) ("Interest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members (calculated daily based on each Clearing Member's pro rata share of Clearing Fund cash deposits), provided that each such Clearing Member has provided OCC with all tax documentation as OCC may from time to time require in order to effectuate such payment, and all other interest earned on investments will accrue to the benefit of [OCC]."). See also, Exchange Act Release No. 82657 (Feb. 8, 2018), 83 FR 6651 (Feb. 14, 2018) (SR-OCC-2018-005) (implementing a cash management fee to cover administrative and other operational expenses incurred by OCC in connection with passing through to Clearing Members the interest earned on Clearing Fund cash deposits held at an OCC account at a Federal Reserve Bank).

²⁷ OCC Rule 604(a) ("Clearing Members may deposit U.S. dollars in accordance with procedures acceptable to [OCC]. Funds so deposited may from time to time be partially or wholly invested by [OCC] for its account in Government securities, and any interest or gain received or accrued on the investment of such funds shall belong to [OCC].")

²⁸ See Exchange Act Release No. 93916, 87 FR at 1820 ("OCC does not propose to amend [Rule 604(a)] by this proposed rule change.").

require management to review the fee schedule “[a]t regularly scheduled CPC meetings.” This change would align the fee schedule review with the cadence of meetings prescribed in the Board and Committee Charters, which OCC recently amended.²⁹ While regular meetings generally occur on a quarterly basis, the proposed change would avoid the need to call special meetings to address the routine review of the fee schedule if a regularly scheduled meeting happens to fall at the beginning of the next quarter or the end of the last quarter. For this reason, OCC aligned other periodic reviews identified in the Committee Charters to occur at each regularly scheduled meeting, as opposed to quarterly.³⁰ OCC proposes to do the same with respect to the cadence of fee schedule reviews in the Capital Management Policy.

(2) Additional Textual Changes

The proposed changes would also make other textual edits and additions to the Capital Management Policy for clarity and consistency with OCC’s other policies. For one, OCC would amend the provision concerning management of OCC’s Equity to facilitate capital expenditures to clarify OCC’s intent that either of the two options identified for doing so—(1) increasing the Target Capital Requirement or (2) retaining the additional Equity as an amount in excess of the Target Capital Requirement—is available to the Board. The textual edits would state more generally at the outset that OCC may retain additional Equity generated from revenue for capital expenditures following a recommendation by Management and Board approval. Retention of such additional Equity generated from revenue is already implicit in the Capital Management Policy’s provisions for setting the fee schedule and determining whether to employ other tools to lower costs for Clearing Members (*e.g.*, a clearing fee refund or holiday), both of which consider OCC’s capital needs as a factor. The proposed changes would also more expressly provide that option (2) is available as an alternative to option (1). The principal difference between the two options is that any excess capital retained under option (2) is available as skin-in-the-game in the event of a default loss. In addition, adding that

such additional Equity would be “generated from revenue” would also clarify the source of the funds OCC may retain as additional Equity, which under OCC’s Capital Management Policy would be generated from fees or interest income—not from capital contributions from OCC’s stockholders that were part of the Capital Plan that predated the Capital Management Policy.³¹

The Capital Management Policy also currently provides that in determining whether to retain additional Equity for capital expenditures, the Board will consider the potential impact of the “investment” on OCC’s operations. The proposed changes would amend this language to instead provide that the Board will consider the potential impact of the “retention of additional Equity” on OCC’s operations, consistent with the terminology that OCC proposes to use throughout that paragraph of the Capital Management Policy. Use of the term “investment” in reference to the retention of Equity may lead to confusion when compared to OCC’s Cash and Investment Management Policy, which addresses guidelines for investing OCC’s own cash and cash deposited by Clearing Members, as discussed above. “Investment” in that context is a separate concept from OCC’s determination whether to retain additional Equity to meet its capital needs, rather than, for example, determining to use tools to decrease the cost of membership through a fee decrease, fee holiday or fee refund.

OCC is also proposing formatting edits to conform the Capital Management Policy to OCC’s current template format for its policies and procedures. Specifically, the proposed changes would add a new introductory paragraph at the outset of the Capital Management Policy that addresses the policy’s applicability and scope. This new introductory paragraph would clarify that the policy applies to the quantification, monitoring and management of OCC’s Equity, as well as identify the OCC departments that have roles in those processes, including, primarily, Accounting and Finance, as well as Member Services, Corporate Risk Management, Legal, and Financial Risk Management business units. Finally, OCC would correct a typo by deleting a duplicative word in one of the footnotes to the Capital Management

Policy, and such change would have no impact on the meaning of the footnote.³²

(3) Cash and Investment Management Policy Correction

Finally, this proposed change would conform the text of the Cash and Investment Management Policy to the intended meaning by inserting “Clearing Fund” before “cash deposits” when stating that “[i]nterest earned on cash deposits held at a Federal Reserve Bank shall accrue to the benefit of Clearing Members less a cash management fee.” The term “Clearing Fund” was inadvertently omitted from the text of the policy, even though that was the intent of the change as described in the associated regulatory filings described above.³³ This change would thereby align the policy statement with OCC Rules 604(a) and 1002(c), which provide different treatment for interest earned on margin cash and Clearing Fund cash deposited at a Federal Reserve Bank.

(2) Statutory Basis

OCC believes the proposed changes are consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, OCC believes the proposed changes are consistent with section 17A(b)(3)(F) of the Exchange Act,³⁴ and Rules 17Ad-22(e)(1),³⁵ 17Ad-22(e)(2),³⁶ and 17Ad-22(e)(3)³⁷ thereunder for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that OCC’s rules must be designed to promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.³⁸ OCC believes the Capital Management Policy is reasonably designed to ensure that it has sufficient capital to avoid disruptions of its clearance and settlement services in the event OCC experiences a non-default loss—and the potential harm to investors and the public interest that such a disruption could cause—by, among other things, providing that the

³² Currently, the relevant footnote states that OCC management makes a recommendation that is “based calculated on an annual basis” pursuant to an underlying procedure. OCC proposes to remove the extraneous word “based” from the footnote.

³³ See *supra* note 25 and accompanying text.

³⁴ 15 U.S.C. 78q-1(b)(3)(F).

³⁵ 17 CFR 240.17Ad-22(e)(1).

³⁶ 17 CFR 240.17Ad-22(e)(2).

³⁷ 17 CFR 240.17Ad-22(e)(3).

³⁸ 15 U.S.C. 78q-1(b)(3)(F).

²⁹ See *supra* note 11.

³⁰ See Exchange Act Release No. 94988, 87 FR at 33537–38 (approving amendments to the Audit Committee, Technology Committee and CPC Charters to align the cadence of periodic reviews to each regular meeting of the Committee, rather than “quarterly”).

³¹ See Exchange Act Release No. 74452 (Mar. 6, 2015), 80 FR 13058 (Mar. 12, 2015) (SR-OCC-2015-02), *disapproved on remand by Exchange Act Release No. 85121* (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (SR-OCC-2015-02).

Board or the CPC periodically reviews OCC's schedule of fees. Updating the Capital Management Policy to align the cadence of those reviews to the Board-determined cadence for regular Board and CPC meetings will enhance the efficiency and effectiveness of the Board and CPC's oversight of OCC's fee schedule by reflecting the Board's determination about the appropriate cadence of those reviews. In addition, the proposed changes to the Capital Management Policy would clarify the options available to OCC to retain additional Equity for capital expenditures, either through the Target Capital Requirement or outside of it, which would help to protect investors and the public interest by ensuring that OCC has a clear framework for retaining additional Equity for capital expenditures that promotes OCC's ability to provide prompt and accurate clearance and settlement services. Similarly, amending the Cash and Investment Management Policy to align the policy with OCC Rules 604(a) and 1002(c) would help avoid any ambiguity concerning the treatment of interest on Clearing Fund cash deposited at a Federal Reserve Bank that OCC has committed to pass through to Clearing Members, thereby ensuring that OCC has a clear and transparent framework for ensuring the safeguarding of funds in its custody or control. For these reasons, OCC believes the proposed changes promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of OCC or for which it is responsible, and protect investors and the public interest.

Rule 17Ad-22(e)(1) under the Exchange Act requires that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.³⁹ The proposed changes to OCC's Cash and Investment Management Policy are designed to conform the text of the policy with OCC's Rules,⁴⁰ thereby improving the clarity and transparency of OCC rules and helping to support OCC's legal basis for its cash management and investment activities. Accordingly, OCC believes that the changes to the Cash and Investment Management Policy are consistent with Rule 17Ad-22(e)(1).⁴¹

Rule 17Ad-22(e)(2) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility.⁴² As noted above, the proposed changes to the Capital Management Policy would align the cadence of the fee schedule review to the CPC Charter, which provides for at least four regularly scheduled meetings each year, but does not require those meetings be scheduled in each fiscal quarter. For that reason, OCC previously amended its Committee Charters to align the cadence of other periodic reviews to occur at each "regularly scheduled" meeting, rather than quarterly.⁴³ The Commission concluded that such similar changes were consistent with Rule 17Ad-22(e)(2) by, among other things, improving the alignment of OCC's governance documents and thereby "creat[ing] stronger clarity and transparency."⁴⁴ In addition, the proposed change to conform OCC's Capital Management Policy to the latest Board-approved format would add an Applicability and Scope section that would identify the OCC business units with responsibilities under that policy, thereby helping to delineate clear and direct lines of responsibility with respect to the processes set forth therein.

Rule 17Ad-22(e)(3)(i) under the Exchange Act requires, in part, that OCC establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing general business risk and investment risk, among other risks, including risk management policies designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by OCC, that are subject to review on a specified periodic basis and approved by the Board annually.⁴⁵ The proposed changes to the Capital Management Policy and the Cash and Investment Management Policy arose from annual reviews of policies designed to address general business risk and investment risk, respectively. OCC believes those changes are consistent with Rule 17Ad-22(e)(3)(i) ⁴⁶ because by helping to maintain

consistency across OCC's rules and conforming those policies to the versions last approved by the Board, the proposed changes support the maintenance of OCC's risk management policies consistent with regulatory expectations.

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Exchange Act⁴⁷ requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposal would impose any burden on competition because the proposal would implement changes to the Capital Management Policy and the Cash and Investment Management Policy that would apply equally to all Clearing Member users of OCC's services. The proposed changes would not inhibit access to OCC's services in any way and would not disadvantage or favor any particular user in relation to another user. Accordingly, OCC does not believe that the proposed rule changes would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) ⁴⁸ of the Act and paragraph (f) of Rule 19b-4 thereunder.⁴⁹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.⁵⁰

³⁹ 15 U.S.C. 78q-1(b)(3)(I).

⁴⁰ 15 U.S.C. 78s(b)(3)(A).

⁴¹ 17 CFR 240.19b-4(f).

⁴² Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

⁴³ 17 CFR 240.17Ad-22(e)(2)(i), (v).

⁴⁴ See *supra* note 30 and accompanying text.

⁴⁵ See Exchange Act Release No. 94988, 87 FR at 33541.

⁴⁶ 17 CFR 240.17Ad-22(e)(3)(i).

⁴⁷ *Id.*

³⁹ 17 CFR 240.17Ad-22(e)(1).

⁴⁰ See *supra* note 25 and accompanying text.

⁴¹ 17 CFR 240.17Ad-22(e)(1).

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-OCC-2023-006 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 File Number SR-OCC-2023-006. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at <https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules>.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-OCC-2023-006 and should be submitted on or before September 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-17445 Filed 8-14-23; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18049 and #18050; California Disaster Number CA-00385]

Administrative Disaster Declaration of a Rural Area for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a rural area for the State of California dated 08/09/2023.

Incident: Severe Winter Storms, Flooding, Landslides and Mudslides.

Incident Period: 12/27/2022 through 01/31/2023.

DATES: Issued on 08/09/2023.

Physical Loan Application Deadline Date: 10/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/09/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Inyo, Mariposa, San Benito, Sonoma, Stanislaus, Sutter.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	4.625
Homeowners without Credit Available Elsewhere	2.313
Businesses with Credit Available Elsewhere	6.610

	Percent
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18049 B and for economic injury is 18050 O.

(Catalog of Federal Domestic Assistance Number 590008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-17493 Filed 8-14-23; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #18051 and #18052; California Disaster Number CA-00386]

Administrative Disaster Declaration of a Rural Area for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative disaster declaration of a rural area for the State of California dated 08/09/2023.

Incident: Rural Area—Severe Winter Storms, Straight-Line Winds, Flooding, Landslides and Mudslides.

Incident Period: 02/21/2023 through 07/10/2023.

DATES: Issued on 08/09/2023.

Physical Loan Application Deadline Date: 10/10/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 05/09/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration of a rural area, applications for disaster loans may be filed at the address listed

⁵¹ 17 CFR 200.30-3(a)(12).

above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Calaveras, Fresno, Inyo, Kings, Marin, Plumas, Santa Barbara, Trinity.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 18051 B and for economic injury is 18052 0.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2023-17494 Filed 8-14-23; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF STATE

[Public Notice: 12148]

Listening Session on Modernizing the Columbia River Treaty Regime

ACTION: Notice of meeting.

SUMMARY: The Department of State will hold a virtual listening session to provide an update after the August 10–11 round of negotiations to modernize the Columbia River Treaty (CRT) regime, and to provide U.S. citizens from the Columbia Basin the opportunity to express their views on the CRT.

DATES: The session will be held on August 22, 2023, from 5:00 p.m.–6:30 p.m. PT (8:00 p.m.–9:30 p.m. ET).

ADDRESSES: The session will be held virtually.

FOR FURTHER INFORMATION CONTACT: Office of Canadian Affairs, Department

of State, ColumbiaRiverTreaty@state.gov, (202) 647–2170.

SUPPLEMENTARY INFORMATION: This listening session is part of the Department's public engagement on the modernization of the CRT regime. (Per 22 U.S.C. 2651a and 2656.) The session is open to the public. To register, go to: https://statedept.zoomgov.com/webinar/register/WN_sGSwEGkdQlCbuj8YmHwK1g. Requests for reasonable accommodation should be made to the email listed above, on or before August 18, 2023. The Department will consider requests made after that date, but might not be able to accommodate them. For more information about the meeting, and to submit questions in advance, please contact ColumbiaRiverTreaty@state.gov. Authority: 22 U.S.C. 2651a, 2656; 5 U.S.C. 552.

Jennifer L. Savage,
Director, Office of Canadian Affairs,
Department of State.
[FR Doc. 2023-17464 Filed 8-14-23; 8:45 am]
BILLING CODE 4710-29-P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA-2023-0015]

Public Transportation on Indian Reservations Program; Tribal Transit Program

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of public meeting and request for comment.

SUMMARY: This notice seeks comments on how the Federal Transit Administration (FTA) Tribal Transit competitive program and technical assistance to Tribes is administered. This notice also introduces FTA's consultation process and schedule for implementation.

DATES: The official comment period for this consultation will close by December 13, 2023. However, FTA's partnership with Tribal leadership will remain ongoing. Late-filed comments will be considered to the extent practicable. Comments must be submitted in writing directly to the official docket per the instructions found in the **ADDRESSES** section of this notice. In-person consultation will be held in conjunction with the National Transportation in Indian Country Conference (NTICC) in Anchorage, Alaska, on Monday, September 25, 2023, from 1:30–3:00

p.m. Alaska Daylight Time (ADT). Additionally, a virtual consultation will be held on November 2, 2023.

ADDRESSES: Comments should be submitted by the following method, identifying your submission by docket number FTA-2023-0015: *Federal eRulemaking Portal:* Go to <https://www.regulations.gov> and follow the online instructions for submitting comments. The in-person consultation will be held at the Dena'ina Civic and Convention Center, 600 West 7th Avenue, Anchorage, AK 99501. The virtual consultation can be accessed here: <https://www.transit.dot.gov/tribal-transit>.

FOR FURTHER INFORMATION CONTACT: Elan Flippin-Jones, Office of Program Management, (202) 366–3800 or email TribalTransit@dot.gov. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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- A. Program Overview
- B. Outreach and Consultation Schedule
- C. Questions on Proposed Changes to the Tribal Transit Competitive Program
- D. Tribal Transit Technical Assistance Improvements
- E. Tribal Transit Formula Program

A. Program Overview

Federal public transportation law (49 U.S.C. 5338(a)(2)(F)) and 49 U.S.C. 5311(j)), as amended by the Infrastructure Investment and Jobs Act (Pub. L. 117–58, the “Bipartisan Infrastructure Law” or “BIL”), authorizes the Public Transportation on Indian Reservations Program (Tribal Transit Program) for Fiscal Years (FY) 2022–2026. The Tribal Transit Program (TTP) is funded as a takedown from the FTA's Formula Grants for Rural Areas Program, 49 U.S.C. 5311. Eligible direct recipients are federally recognized American Indian Tribes and Alaskan Native Villages, groups and, communities providing public transportation in rural areas, as identified by the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA) at this link: <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes>. The TTP funds are allocated for grants to eligible recipients for any purpose eligible under Section 5311, which includes capital, operating, and planning projects. BIL authorizes a total of \$229 million over five years, of which \$183.2 million is for the TTP formula program, and \$45.8 million is for the TTP competitive grant program.

FTA is committed to ensuring that programs, policies, and procedures are

responsive to the needs and concerns of Indian Tribes. FTA's last official consultation with the Tribes was conducted in November 2012. FTA's previous consultation efforts can be found here: 2012 Request for Comments (77 FR 67439) and 2013 Response to Comments (78 FR 27284). USDOT Order 5301.1 (<https://www.transportation.gov/individuals/foia/dot-order-53011-american-indiansalaska-native-tribes>) explains that FTA will engage in formal Government-to-Government consultation with federally recognized Tribes before taking any action that may significantly or uniquely affect them. Potential policy changes under the Tribal Transit competitive program that FTA is considering may significantly affect Tribes. This FTA action also supports E.O. 13175: Executive Order on Consultation and Coordination with Indian Tribal Governments (<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>). The Federal Government's commitment to implement E.O. 13175 is reaffirmed in the Biden Administration's January 26, 2021 Presidential Memo on Tribal Consultation and Strengthening Nation-to-Nation Relationships (<https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments>) and the November 30, 2022 Presidential Memo on Uniform Standards for Tribal Consultation (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/>).

Since the program has now been administered under the requirements of the previous consultation for

approximately a decade, funding levels have increased, as well as the number of Tribes participating in the program. Additionally, certain operational considerations may have changed, particularly in response to the COVID-19 pandemic, supply chain disruptions, and increases in the cost of goods and services. Therefore, FTA is consulting with Tribal recipients to ensure the program still is being administered in a beneficial way. Specifically, with the authorization of BIL, the amount made available under Tribal Transit competitive program increased by 83 percent over previously authorized levels of the Fixing America's Surface Transportation (FAST) Act. Furthermore, in Fiscal Year (FY) 2013, approximately 110 Tribes received funding under the TTP formula program. That number has grown to 136 Tribes receiving funding under the formula program in FY 2023.

Through this notice, FTA seeks comments on the administration of the Tribal Transit competitive program, as well as comments about the technical assistance that FTA provides to recipients of FTA Tribal Transit funding. Comments related to other aspects of the TTP, including the administration of the TTP formula program, will also be considered. Comments from eligible recipients of the Tribal Transit competitive program are highly encouraged.

B. Outreach and Consultation Schedule

1. Outreach and Meetings

In-person consultation will be held in conjunction with the National Transportation in Indian Country Conference (NTICC) in Anchorage, Alaska on Monday, September 25, 2023, from 1:30–3 p.m. ADT.

Additionally, a virtual consultation will be held on November 2, 2023. Tribes that are eligible recipients of FTA's TTP are encouraged to attend one or both of these meetings. Comments made at these meetings will inform FTA's decision-making. However, to be considered as part of the official consultation, comments must be made in writing to the docket.

2. Consultation Schedule

- Inform Tribes of consultation efforts in Notice of Funding Opportunity (NOFO) for FY 2023 Tribal Transit Competitive Program: Published March 26, 2023 (88 FR 18364).
- In-Person listening session at Department of Transportation Tribal Transit Symposium held in Oklahoma City: May 24–25, 2023.
- In-Person consultation meeting at NTICC: September 25, 2023.
- Virtual outreach meeting: November 2, 2023.
- Publication of **Federal Register** Notice with responses and program changes to the TTP competitive program: 2024.

C. Questions on Proposed Changes to the Tribal Transit Competitive Program

A total of \$45,812,610 is authorized for FY 2022–2026 for the Tribal Transit competitive grant program. Funds may be awarded to federally-recognized Indian Tribes for any purpose under the Section 5311 program. The outcome of this consultation may impact the administration of competitive funding awarded for FY 2024–2026. For FY 2024–2026, a total of \$28,123,961 is made available under the Tribal Transit competitive program.

Funding program	FY 2024	FY 2025	FY 2026
Tribal Transit Competitive Program	\$9,169,076	\$9,358,487	\$9,596,398

Program requirements for the Tribal Transit Program can be found in the Section 5311 Circular (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/formula-grants-rural-areas-program-guidance-and-application>).

FTA seeks comments for the Tribal Transit competitive program on the following questions:

1. Should TTP competitive program funds continue to support capital, operating and planning projects? These types of projects are currently eligible under the program. Limitations on certain activities will leave more

funding available for the other types of activities. For example, limiting or removing operating projects as an eligible project type will leave more funding available for capital and planning projects.

2. Should operating assistance under the competitive program be limited based on the amount of TTP formula allocation received? In the past, FTA has limited operating assistance to applicants who receive less than \$20,000 under the TTP formula program. This threshold preserves TTP competitive funds for larger capital projects. Increasing or removing this

threshold would potentially reduce the amount of funding available for capital projects.

3. Should TTP competitive program funds continue to support start-up, expansion, and replacement capital projects? These projects are currently eligible under the program. Should FTA prioritize start-up projects in order to advance Tribal transit providers into the formula program? Once a Tribal transit provider begins operating service and providing service data to the National Transit Database, the provider will begin to receive Tribal Transit formula funds.

4. Should FTA establish a minimum and/or maximum grant amount under the TTP competitive program? Currently, there is no minimum or maximum set for allocations under this program. However, planning grants are capped at \$25,000. Establishing a maximum grant amount would preserve funds for additional projects but may prevent larger projects from being funded at the full request.

5. Should FTA continue to cap planning grants at \$25,000 under the competitive program? Should FTA retain the cap for planning grants but set it at a different amount? This cap preserves TTP competitive funds for larger capital projects.

6. Should FTA require a local match of 10 percent of total project costs for both capital and operating assistance projects under the TTP competitive program? If so, should FTA continue to include an option for Tribes to submit a local match waiver request? Currently, there is no match required for both the competitive and formula programs. However, in the past, a match of 10 percent was required on competitive program projects, unless the Tribe applied for a hardship waiver. Requiring a local match would allow for more projects to be funded, but may discourage some Tribes from applying for funding.

7. Should FTA retain the condition that indirect costs not exceed 10 percent of each Tribal Transit competitive grant allocation? Providing a cap on the percentage of a grant that can be applied to indirect costs reserves more funding for capital projects, but may underestimate the true amount of indirect costs attributable to a project.

8. Should FTA continue to provide Tribes 90 days to submit applications under the TTP competitive program Notice of Funding Opportunity? In the past, FTA has had either a 60-day or a 90-day deadline for application submission under the TTP competitive program.

9. Should FTA examine or alter any other aspect of the Tribal Transit competitive program?

D. Tribal Transit Technical Assistance Improvements

Through the Tribal Transit Technical Assistance Assessments Initiative, FTA Collaborates with Tribal Transit recipients to review processes and identify areas in need of improvement and then assists by offering solutions to address these needs—all in a supportive and mutually beneficial manner that results in technical assistance. These Assessments include discussions of compliance areas pursuant to FTA’s Master Agreement (<https://www.transit.dot.gov/funding/grantee-resources/sample-fta-agreements/fta-grant-agreements>), site visits, promising practices reviews, and technical assistance from FTA and its contractors. These Assessments also provide FTA with invaluable opportunities to learn more about a Tribe’s perspectives and how to better honor the sovereignty of each Tribal Nation. To date, FTA has conducted 62 Assessments and will conduct 36 Assessments in FY 2023–2024.

In addition, FTA also offers technical assistance to Tribes through its National Rural Transit Assistance Program (<https://www.nationalrtap.org/>) and FTA Regional Offices (<https://www.transit.dot.gov/about/regional-offices/regional-offices>) provide direct Technical Assistance to Tribal recipients in their region. FTA seeks comments on its technical assistance efforts through the following question:

1. How can FTA improve its technical assistance efforts for Tribal recipients?

E. Tribal Transit Formula Program

For FY 2024–2026, the TTP formula program has been authorized at \$112.5 million.

Funding program	FY 2024	FY 2025	FY 2026
Tribal Transit Formula Program	\$36,676,304	\$37,433,948	\$38,385,592

Although no specific questions are posed, FTA also encourages comments and suggestions on ways to improve the TTP formula program.

Nuria I. Fernandez,
Administrator.

[FR Doc. 2023–17500 Filed 8–14–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects—East Campus Expansion Project, Metra UP North Rebuild: Fullerton to Addison Project and Silver Line Project

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) regarding the three projects: East

Campus Expansion Project, Indianapolis, Marion County, Indiana; Metra UP North Rebuild: Fullerton to Addison Project, Chicago, Cook County, Illinois; and Silver Line Project, Tarrant, Dallas and Collin Counties, Texas. The purpose of this notice is to publicly announce FTA’s environmental decisions on the subject projects, and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before January 12, 2024.

FOR FURTHER INFORMATION CONTACT: Kathryn Loster, Assistant Chief Counsel, Office of Chief Counsel, (312) 705–1269, or Saadat Khan, Environmental Protection Specialist, Office of Environmental Programs, (202) 366–9647. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions subject to 23 U.S.C. 139(l) by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project files for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA’s Regional Offices may be found at <https://www.transit.dot.gov>.

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA (42 U.S.C. 4321–4375), section 4(f) requirements (49 U.S.C. 303), Section 106 of the National Historic Preservation Act (54 U.S.C. 306108),

Endangered Species Act (16 U.S.C. 1531), Clean Water Act (33 U.S.C. 1251), Uniform Relocation and Real Property Acquisition Policies Act (42 U.S.C. 4601), and the Clean Air Act (42 U.S.C. 7401–7671q). This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice follow:

1. *Project name and location:* East Campus Expansion, Indianapolis, Marion County, Indiana. *Project Sponsor:* Indianapolis Public Transportation Corporation (IndyGo), Indianapolis, Indiana. *Project description:* The East Campus Expansion project (Project) involves a real estate acquisition of a property (9625 East 33rd Street) by IndyGo located immediately adjacent to the Existing East Campus (9503 East 33rd Street). The Project will expand the Existing East Campus to provide capacity to meet current and future fleet needs, and to provide operational efficiencies for further implementing the Marion County Transit Plan. The Project includes a fleet terminal, operations center, maintenance facility, and a bus operator training track. The Project also involves construction of expanded surface parking for staff, meeting the American with Disabilities Act (ADA) standards, and associated infrastructure improvements.

Final agency actions: Section 106 No Historic Properties Affected determination dated March 13, 2023, and determination of the applicability of a categorical exclusion pursuant to 23 CFR 771.118(d), dated June 12, 2023. *Supporting documentation:* Documented Categorical Exclusion (CE) and supporting materials, dated May 22, 2023. The CE and associated documents can be viewed and downloaded from: <https://www.indygo.net/projects/>.

2. *Project name and location:* Metra UP North Rebuild: Fullerton to Addison, Chicago, Cook County, Illinois. *Project Sponsor:* Northeast Illinois Regional Commuter Railroad Company (Metra), Chicago, Illinois. *Project description:* The Metra UP North Rebuild: Fullerton to Addison Project (Project) along Metra's Union Pacific North Line will modernize a stretch of commuter rail line in the city of Chicago. The Project involves replacement of eleven (11) 120-year-old railroad bridges from Fullerton Avenue to Cornelia Avenue, including many retaining walls. The Project will shift tracks west between Fullerton Avenue and Addison Street to align with the existing tracks north and south of the

Project area and the Roscoe Street and Cornelia Avenue will be lowered to maintain current clearance under the roadway and the Chicago Transit Authority Brown Line. The Project will also refurbish (including painting) the existing Lincoln/Addison bridge and include some utility work along the Project corridor.

Final agency actions: Section 106 No Adverse Effect determination dated July 15, 2022, and determination of the applicability of a categorical exclusion pursuant to 23 CFR 771.118(d), dated June 21, 2023. *Supporting documentation:* Documented Categorical Exclusion (CE) and supporting materials, dated May 1, 2023. The CE and associated documents can be viewed and downloaded from: https://www.metra.com/UPNrebuild#Project_UpdateJuly_2023.

3. *Project name and location:* Silver Line Project (Project), Tarrant, Dallas and Collin Counties, Texas. *Project Sponsor:* Dallas Area Rapid Transit (DART), Dallas, Texas. *Project description:* The project consists of a 26-mile double-track regional commuter rail line extending from Dallas-Fort Worth International (DFW) Airport to Shiloh Road in Plano. The alignment traverses seven cities: Grapevine, Coppell, Dallas, Carrollton, Addison, Richardson, and Plano. FTA issued a combined Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) on November 9, 2018, for the project. Subsequently, FTA published a notice of limitation on claims against the project on March 19, 2019, per 23 U.S.C. 139(l). Since then, FTA has completed a series of re-evaluations of the project to address changes resulting from design modifications and stakeholder coordination. FTA also published a notice of limitation on claims against the project on November 18, 2022, per 23 U.S.C. 139(l) for memoranda to file phases A to E. This notice only applies to the discrete actions taken by FTA under the re-evaluations for phases F, G, and H, as described below.

Final agency actions: FTA determined for each re-evaluation that neither a Supplemental Environmental Impact Statement nor a Supplemental Environmental Assessment is necessary, and the November 2018 FEIS/ROD remains valid. *Supporting documentation:* Memorandum to File Phase F, concerning the Shiloh Road Layover Facility and the US Brass Avoidance Alignment, dated January 6, 2023; Memorandum to File Phase G, concerning the Custer Parkway Grade Separation Change and the Jupiter Road Grade Separation, dated January 27,

2023; and Memorandum to File Phase H, concerning the Final Coit Road Design, dated July 14, 2023. All supporting documentation can be viewed and downloaded from: <https://www.dart.org/about/expansion/silverline.asp>.

Authority: 23 U.S.C. 139(l)(1).

Megan Blum,

Supervisory Environmental Protection Specialist.

[FR Doc. 2023–17495 Filed 8–14–23; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of prompt payment interest rate.

SUMMARY: For the period beginning July 1, 2023, and ending on December 31, 2023, the prompt payment interest rate is 4–7/8 per centum per annum.

DATES: Applicable July 1, 2023, to December 31, 2023.

ADDRESSES: Comments or inquiries may be mailed to: E-Commerce Division, Bureau of the Fiscal Service, 401 14th Street SW, Room 306F, Washington, DC 20227. Comments or inquiries may also be emailed to PromptPayment@fiscal.treasury.gov.

FOR FURTHER INFORMATION CONTACT: Thomas M. Burnum, E-Commerce Division, (202) 874–6430; or Thomas Kearns, Senior Counsel, Office of the Chief Counsel, (202) 874–7036.

SUPPLEMENTARY INFORMATION: An agency that has acquired property or service from a business concern and has failed to pay for the complete delivery of property or service by the required payment date shall pay the business concern an interest penalty. 31 U.S.C. 3902(a). The Contract Disputes Act of 1978, sec. 12, Pub. L. 95–563, 92 stat. 2389, and the Prompt Payment Act, 31 U.S.C. 3902(a), provide for the calculation of interest due on claims at the rate established by the Secretary of the Treasury.

The Secretary of the Treasury has the authority to specify the rate by which the interest shall be computed for interest payments under section 12 of the Contract Disputes Act of 1978 and under the Prompt Payment Act. Under the Prompt Payment Act, if an interest penalty is owed to a business concern, the penalty shall be paid regardless of

whether the business concern requested payment of such penalty. 31 U.S.C. 3902(c)(1). Agencies must pay the interest penalty calculated with the interest rate, which is in effect at the time the agency accrues the obligation to pay a late payment interest penalty. 31 U.S.C. 3902(a). “The interest penalty shall be paid for the period beginning on the day after the required payment date and ending on the date on which payment is made.” 31 U.S.C. 3902(b).

Therefore, notice is given that the Secretary of the Treasury has determined that the rate of interest applicable for the period beginning July 1, 2023, and ending on December 31, 2023, is 4–7/8 per centum per annum.

Timothy E. Gribben,

Commissioner, Bureau of the Fiscal Service.

[FR Doc. 2023–17450 Filed 8–14–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the name of a person whose property and interests in property have been unblocked and who has been removed from the List of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

OFAC: 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 & Enforcement, 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://ofac.treasury.gov/>).

Notice of OFAC Actions

On August 3, 2023, OFAC determined that the following person would be removed from the SDN List and that their property and interests in property subject to U.S. jurisdiction are unblocked pursuant to Executive Order 13818 of December 20, 2017 (“Blocking the Property of Persons Involved in

Serious Human Rights Abuse or Corruption”), and U.S. persons are no longer generally prohibited from engaging in transactions with them.

Individual

1. SEEMAR, Satish, United Arab Emirates; DOB 25 Dec 1961; POB Punjab, India; Gender Male; Passport Z1917610 expires 18 Mar 2019 (individual) [GLOMAG] (Linked To: KADYROV, Ramzan Akhmatovich).

Dated: August 3, 2023.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–17432 Filed 8–14–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to Communications Excise Tax; Prepaid Telephone Cards

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning communications excise tax; prepaid telephone cards.

DATES: Written comments should be received on or before October 16, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB control number 1545–1628 or Communications Excise Tax; Prepaid Telephone Cards.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the regulation should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.L.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Communications Excise Tax; Prepaid Telephone Cards.

OMB Number: 1545–1628.

Regulation Number: Treasury Decision 8855 (REG–118620–97).

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Current Actions: There are no changes to the regulation or burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 96.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 34 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 9, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–17465 Filed 8–14–23; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN**Sunshine Act Meetings**

TIME AND DATE: August 17, 2023, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1-929-205-6099 (US Toll) or 1-669-900-6833 (US Toll), Meeting ID: 941 2440 0273, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is <https://kellen.zoom.us/join/94124400273>.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the "Subcommittee") will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda**I. Call to Order—UCR Education and Training Subcommittee Chair**

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

- Subcommittee action only to be taken in designated areas on agenda

IV. Review and Approval of Subcommittee Minutes From the May 18, 2023 Subcommittee Meeting—UCR Education and Training Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the May 18, 2023—Subcommittee meeting will be reviewed. The Subcommittee will consider action to approve.

V. Project Development—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will discuss the development of key projects to include NRS module development, establishing educational audit taskforce, and creation of a UCR purpose and value video.

VI. Other Business—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

VII. Adjournment—UCR Education and Training Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, August 10, 2023 at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, eleaman@board.ucr.gov.

Alex B. Leath,
Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023-17601 Filed 8-11-23; 4:15 pm]

BILLING CODE 4910-YL-P

DEPARTMENT OF VETERANS AFFAIRS**Cooperative Studies Scientific Evaluation Committee, Notice of Meeting**

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Cooperative Studies Scientific Evaluation Committee will hold a meeting on August 31, 2023 by Zoom.

The meeting will begin at 9:00 a.m. and end at 3:45 p.m. EST.

The Committee provides expert advice on VA cooperative studies, multi-site clinical research activities and policies related to conducting and managing these efforts. The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. In addition, the premature disclosure of potential research activities prior to them being approved could frustrate the implementation of approved research activities. As provided by section 10(d) of Public Law 92-463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

The Committee will accept oral comments from the public for the open portion of the meeting. Members of the public who wish to attend the open teleconference should call 872-701-0185, conference ID 456 277 285#. Those who plan to attend or wish additional information should contact David Burnaska, Program Manager, Cooperative Studies Program (14RD), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, at 202-445-1295 or david.burnaska@va.gov. Those wishing to submit written comments may send them to Mr. Burnaska at the same address and email.

Dated: August 9, 2023.

LaTonya L. Small,
Federal Advisory Committee Management Officer.

[FR Doc. 2023-17447 Filed 8-14-23; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

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August 15, 2023

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Additional Guidance on Low-Income Communities Bonus Credit Program;
Final Rule

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9979]

RIN 1545-BQ81

Additional Guidance on Low-Income Communities Bonus Credit Program**AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final regulations.

SUMMARY: This document contains final regulations concerning the application of the low-income communities bonus credit program for the energy investment credit established pursuant to the Inflation Reduction Act of 2022. Under this program, applicants investing in certain solar or wind-powered electricity generation facilities for which the applicants otherwise would be eligible for an energy investment credit may apply for an allocation of environmental justice solar and wind capacity limitation to increase the amount of the energy investment credit for the taxable year in which the facility is placed in service. This document provides definitions and requirements that are applicable for this program. These final regulations affect applicants seeking allocations of the environmental justice solar and wind capacity limitation to increase the amount of the energy investment credit for which such applicants would otherwise be eligible once the facility is placed in service.

DATES: *Effective date:* These regulations are effective on October 16, 2023.

Applicability date: For date of applicability, see § 1.48(e)–1(o).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Whitney Brady, the IRS Office of the Associate Chief Counsel (Passthroughs and Special Industries) at (202) 317–6853 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) relating to new section 48(e) of the Internal Revenue Code (Code). Section 13103 of Public Law 117–169, 136 Stat. 1818, 1921 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (IRA), added new section 48(e) to the Code to increase the amount of the energy investment credit determined under section 48(a) (section 48 credit) with respect to eligible property of the taxpayer that is part of

a qualified solar or wind facility if the taxpayer applies for and is awarded an allocation of environmental justice solar and wind capacity limitation (Capacity Limitation) as part of the low-income communities bonus credit program for the section 48 credit (Low-Income Communities Bonus Credit Program or Program).¹ This document contains final definitions and rules applicable to the Program.

The section 48 credit for a taxable year is generally calculated by multiplying the basis of each energy property placed in service by a taxpayer during that taxable year by the energy percentage (as defined in section 48(a)(2)). Section 48(e) increases the taxpayer's section 48 credit by increasing the energy percentage used to calculate the amount of the section 48 credit (section 48(e) Increase) in the case of eligible property that is part of a qualified solar or wind facility that receives an allocation of Capacity Limitation under the Program.

On February 13, 2023, the Department of the Treasury (Treasury Department) and the IRS released Notice 2023–17, 2023–10 I.R.B. 505, to establish the Program. Notice 2023–17 also provided initial Program guidance regarding applicable definitions and Program requirements.

On June 1, 2023, the Treasury Department and the IRS published in the **Federal Register** (88 FR 35791) a notice of proposed rulemaking (REG–110412–23, 2023–26 I.R.B. 1098) under section 48(e) (Proposed Rules) relating to the Program. Numerous commenters responded to the Proposed Rules, and after consideration of all comments received by June 30, 2023, the Proposed Rules are adopted as modified by this Treasury decision. The areas of comment and the revisions to the Proposed Rules are discussed in the following Summary of Comments and Explanation of Revisions section of this preamble. The comments are available for public inspection at <https://www.regulations.gov> or upon request. Other minor, editorial, and clarifying revisions made to the Proposed Rules as adopted in these final regulations are not discussed in the Summary of Comments and Explanation of Revisions section of this preamble.

As announced in Proposed Rules, the Treasury Department and the IRS are also providing procedural and clarifying

guidance applicable to the Program in Revenue Procedure 2023–27, 2023–35 I.R.B. This procedural and clarifying guidance is being issued simultaneously with these final regulations and provides the process for applying to the Program. These procedural rules provide guidance necessary to implement the Program, including, in relevant part, information an applicant must submit, the application review process, and the manner of obtaining an allocation.

Summary of Comments and Explanation of Revisions*I. Definition of Qualified Solar or Wind Facility*

Section 48(e)(2)(A) and the Proposed Rules define a single qualified solar or wind facility as any facility that (i) generates electricity solely from a wind facility, solar energy property, or small wind energy property; (ii) has a maximum net output of less than 5 megawatts (MW) (as measured in alternating current (AC)); and (iii) is described in at least one of the four facility categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4 are described in more detail in part III of this Summary of Comments and Explanation of Revisions section). In addition, for purposes of determining allocations, administering the Program fairly, and avoiding abuse, the Proposed Rules provided that multiple solar or wind energy properties or facilities that are operated as part of a single project would be aggregated and treated as a single facility. Whether multiple facilities or energy properties are operated as part of a single project would depend on the relevant facts and circumstances and would be evaluated based on the factors provided in section 7.01(2)(a) of Notice 2018–59 or section 4.04(2) of Notice 2013–29, as applicable.

A few commenters suggested the Treasury Department and the IRS should not impose the single project factors to aggregate multiple facilities or energy properties into a single facility for purposes of these regulations. For example, some commenters said this does not work well for Tribal or some other partially-consolidated “projects” that may share ownership, financing, and other factors for efficiency, yet are different and distinguishable facilities. Some of the commenters suggested that a Tribe must be allowed to apply Capacity Limitation allocations for multiple projects, as separate projects, to allow for phased deployment of projects, and to treat each phase as a different project. Another commenter recommended relaxing restrictions in

¹ This notice of proposed rulemaking uses the terms “taxpayer” and “applicant” interchangeably (as the context may require) to avoid confusion given that persons eligible to apply for an allocation of Capacity Limitation under the Program may be exempt from or otherwise not subject to Federal income taxes imposed by chapter 1 of the Code.

the project definition so long as a reasonable period has elapsed to ensure adequate competitive forces in the market become established or suggested a carve-out from this rule for certain projects. An additional commenter suggested that if certain factors are present, those single factors standing alone should result in energy properties or facilities being regarded as a single project (that is, apart from other properties or facilities with which they might otherwise be grouped) without the need to apply all of the factors provided in section 7.01(2)(a) of Notice 2018–59 or section 4.04(2) of Notice 2013–29, as applicable. Similarly, a commenter noted that co-located sites are typically permitted as a single project, even though the interconnection, ownership, financing, and construction of the facilities are conducted independently. This commenter stated that maintaining the requirement of one project per permit should not disqualify either project from receiving allocation under the Program.

The Treasury Department and the IRS determined that to prevent some applicants from attempting to circumvent the less than 5 MW maximum net output limitation provided in section 48(e)(2)(A)(ii) by artificially dividing larger projects into multiple facilities, it is necessary to incorporate the single project factors tests provided in section 7.01(2)(a) of Notice 2018–59 or section 4.04(2) of Notice 2013–29, as applicable, into the definition of qualified solar or wind facility. Therefore, the final regulations generally adopt the definition of qualified solar or wind facility provided in the Proposed Rules. However, the final regulations clarify that if multiple facilities or energy properties are regarded as a single facility for purposes of this rule, they will be regarded as a single facility for all purposes under the Program. Additionally, to alleviate some commenters' concerns that multiple energy properties or facilities that satisfy any of the listed factors will conclusively result in a single project determination, the final regulations clarify that whether multiple facilities or energy properties are operated as part of a single project and thus treated as a single facility, will depend on the relevant facts and circumstances. Thus, a single factor or factors are not determinative.

A commenter noted that the Proposed Rules specify that a qualified facility refers to a solar energy property with an output of less than 5 MW and recommended aligning the Program with the industry standard by allowing projects that have a capacity of up to 5

MW. This comment is not adopted because section 48(e)(2)(A)(ii) limits the Program to facilities that have a maximum net output of less than 5 MW (as measured in AC).

II. Four Categories of Qualified Solar or Wind Facilities

Depending on the category of the facility, an allocation of Capacity Limitation under the Program may result in a section 48(e) Increase equal to either 10 percentage points or 20 percentage points. Section 48(e)(1)(A)(i) provides for a section 48(e) Increase of 10 percentage points for eligible property that is located in a low-income community (Category 1 facility), or on Indian land (Category 2 facility). Section 48(e)(1)(A)(ii) provides for a section 48(e) Increase of 20 percentage points for eligible property that is part of a qualified low-income residential building project (Category 3 facility) or a qualified low-income economic benefit project (Category 4 facility).

Under section 48(e)(2)(A)(iii)(I), the term low-income community is generally defined under section 45D(e)(1), with certain modifications described elsewhere in section 45D(e), as any population census tract if the poverty rate for such tract is at least 20 percent, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. Section 48(e)(2)(A)(iii)(I) provides that Indian land is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)). The final regulations clarify that the poverty rate for a census tract is generally based on the 2011–2015 American Community Survey (ACS) low-income community data for the New Markets Tax Credit (NMTC), however, if updated data is released, a taxpayer can choose to base the poverty rate for any population census tract on either the 2011–2015 ACS low-income community data or the updated ACS low-income community data for a period of 1 year following the date of the release of the updated data. After the 1-year transition period, the updated ACS low-income community data must be used. Applicants who satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period,

unless the location of the facility changes.

Section 48(e)(2)(B) provides that a facility will be treated as part of a qualified low-income residential building project if (i) such facility is installed on a residential rental building that participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) (VAWA), a housing assistance program administered by the Department of Agriculture (USDA) under title V of the Housing Act of 1949, a housing program administered by a Tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22)), or such other affordable housing programs as the Secretary may provide, and (ii) the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building.

Section 48(e)(2)(C) provides that a facility will be treated as part of a qualified low-income economic benefit project if at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than 200 percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved, or less than 80 percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

One commenter stated that the statute does not provide for “facility categories” and that what section 48(e)(2)(A)(iii) describes is not four distinct facility categories, but four ways of meeting geographic or benefits-based qualifying criteria. The Treasury Department and the IRS determined that a change in the final regulations is not necessary because the use of facility categories as a means of differentiating the four distinct geographic or benefits-based qualifying criteria is consistent with the statute and serves as an administratively convenient mechanism to distinguish among them and describe requirements and definitions applicable to each. Accordingly, as discussed in part II of this Summary of Comments and Explanation of Revisions section, the final regulations, consistent with the Proposed Rules, require a qualified solar or wind facility to be described in one of the four categories described in section 48(e)(2)(A)(iii) (Category 1, 2, 3, or 4).

Another commenter asked for clarification on whether a project must just be located in a low-income

community or whether benefits must also go to a low-income community to qualify for each category. The Treasury Department and the IRS considered the comment but did not make a change because the Proposed Rules and now the final regulations clearly describe the categories that have applicable benefits sharing requirements consistent with statutory requirements, so no change is necessary. For Category 1 and Category 2, section 48(e)(2)(A)(iii)(I) requires a facility to be located in a low-income community (as defined in section 45D(e)) or on Indian land (as defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2))), but the statute, and accordingly the final regulations, do not impose any requirements to share financial benefits with low-income subscribers or households. Conversely, for Category 3 and Category 4, section 48(e)(2)(B) and (C) does impose benefits sharing requirements, and those rules were included in the Proposed Rules and are provided in these final regulations as modified. See part V of this Summary of Comments and Explanation of Revisions section for more discussion regarding those requirements.

Specific to Category 2, another commenter noted that the definition of located on Indian land should include simple fee and trust lands located off-reservation owned by Tribes. Trust lands located off-reservation are covered under the statutory definition of Indian land referenced in section 48(e)(2)(A)(I). Fee lands, however, would only be covered if they are included within the boundaries of a reservation or in the census categories included within the Indian land definition. Therefore, the final regulations did not adopt the commenter's suggestion and define "Indian land" by reference to section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)) without additional clarification.

Specific to Category 3, a commenter asked for clarification that the installation of a facility on a "residential rental building" extends to the curtilage of the building, including carports, sheds, and open space on the same property. Another commenter asked for similar clarification stating that the guidance currently defines a facility as eligible if it is a facility installed on an eligible building. This commenter stated that this is an overly narrow statement that would not include adjacent carport or ground-mount solar on the same parcel. The commenter encouraged the Treasury Department and the IRS to include these other solar installation locations, as rural and suburban section 42 low-income housing credit

(commonly referred to as LIHTC) properties often have excess land or large parking areas due to zoning requirements that could host solar installations. The final regulations adopt this comment by clarifying that a facility is treated as installed on a residential rental building that participates in a covered housing program or other affordable housing program (Qualified Residential Property) even if that facility is not on the Qualified Residential Property if the facility is installed on the same or adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 facility are satisfied.

Several commenters requested that the Treasury Department and the IRS categorically include any LIHTC project as a Category 3 project. Section 48(e)(2)(B)(i) provides that a covered housing program is defined in VAWA. The statutory cross-reference is comprehensive and includes numerous types of housing programs and policies across Federal agencies, including the low-income housing credit under section 42 of title 26. Accordingly, a solar or wind facility that is installed on a "qualified low-income building" under section 42 is eligible for Category 3. In response to commenters' general inquiries on covered housing programs, the Treasury Department and the IRS, in consultation with other Federal agencies, developed an illustrative list of Federal housing programs and policies that meet the requirements in section 48(e)(2)(B)(i). This list will be made available on the Program web page and is also listed here:

Covered housing programs and policies (as defined in VAWA) with active affordability covenants tied to the following:

- Department of Housing and Urban Development's (HUD) Section 202 Supportive Housing for the Elderly, including the direct loan program under Section 202;
- HUD's Section 811 Supportive Housing for Persons with Disabilities;
- HUD's Housing Opportunities for Persons With AIDS (HOPWA) program;
- HUD's homeless programs under title IV of the McKinney-Vento Homeless Assistance Act, including the Emergency Solutions Grants program, the Continuum of Care program, and the Rural Housing Stability Assistance program;
- HUD's HOME Investment Partnerships (HOME) program;
- Federal Housing Administration (FHA) mortgage insurance under Section 221(d)(3) subsidized with a below-market interest rate (BMIR)

prescribed in the proviso of Section 221(d)(5) of the National Housing Act;

- HUD's Section 236 interest rate reduction payments;
 - HUD Public Housing assisted under section 9 of the United States Housing Act of 1937;
 - HUD tenant-based and project-based rental assistance under section 8 of the United States Housing Act of 1937;
 - HUD Section 8 Moderate Rehabilitation Program;
 - HUD Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals;
 - USDA Section 515 Rural Rental Housing;
 - USDA Section 514/516 Farm Labor Housing;
 - USDA Section 538 Guaranteed Rural Rental Housing;
 - USDA Section 533 Housing Preservation Grant Program;
 - Treasury/IRS Low-Income Housing Credit under section 42 of the Code;
 - HUD's National Housing Trust Fund;
 - Veterans Administration's (VA) Comprehensive Service Programs for Homeless Veterans;
 - VA's grant program for homeless veterans with special needs;
 - VA's financial assistance for supportive services for very low-income veteran families in permanent housing; and/or
 - Department of Justice transitional housing assistance grants for victims of domestic violence, dating violence, sexual assault, or stalking.
- Section 48(e)(2)(B)(i) also includes the following Federal housing programs:
- Housing assistance programs administered by the USDA under title V of the Housing Act of 1949; and/or
 - Housing programs administered by an Indian Tribe or a Tribally designated housing entity (as defined in section 4(22) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103(22))).
- One commenter also requested that Federal Weatherization Assistance Program (WAP) affordable housing categorically qualify as Category 3 covered housing. The WAP is not a housing program. The WAP is a program of the DOE that provides weatherization services and support for qualifying housing but does not provide or administer the actual housing. Therefore, the WAP program is not included as a Category 3 housing program.
- Several commenters also requested that Category 3 include as an eligible residential rental building housing that is enrolled under a State-specific low-

income housing program that is not enrolled, or may not qualify, under the statutorily listed Federal housing programs. Similarly, several commenters requested that housing authorities under State programs be able to appeal for qualification under the Program. One commenter provided that housing authorities should be able to prove they meet certain minimum criteria and thresholds beyond enrollment in specified Federal programs.

State specific housing programs do not categorically qualify as Qualified Residential Properties nor do the facilities installed on such buildings categorically meet the requirements of section 48(e)(2)(B). The statute specifically lists only Federal housing programs and provides that the Secretary may include other affordable housing programs. The Treasury Department and the IRS decline to include additional housing programs in the final regulations at this time so that the Program will focus on the statutorily-prescribed housing programs. However, the Treasury Department and the IRS may include additional housing programs in future Program guidance.

The final regulations also do not provide a special review process for housing authorities to be considered as qualifying under State specific programs for the same reasons as provided earlier regarding State program eligibility. Moreover, a housing authority is not the same thing as a housing program. It is the solar or wind facility that is being reviewed, upon application, to determine whether the facility qualifies for an allocation, and not a specific housing authority or building that the facility will serve. The building on which the facility is built must already be a part of a Qualified Residential Property, otherwise the facility is not eligible under the requirements for Category 3.

One commenter also requested greater protection for the tenants of a Qualified Residential Property when a facility applies for or receives an allocation under Category 3. The commenter requested rent protection for the life of the solar or wind facility to ensure tenants are not subject to rent increases due to the installation of the solar or wind facility. The commenter also requested eviction protection, relocation assistance for tenants affected by construction, with a right of return for those tenants after construction, a sales restriction of five years for the building on which the facility is installed, and strong enforcement mechanisms.

The Treasury Department and the IRS considered this comment but did not

adopt the commenter's suggestions because the requirements recommended by the commenter are outside the scope of section 48(e) and therefore what could be implemented by these final regulations.

III. Eligible Property, Including Energy Storage Technology Installed in Connection With Solar or Wind Facility

"Eligible property" as defined by section 48(e)(3) means energy property that (i) is part of a wind facility described in section 45(d)(1) for which an election to treat the facility as energy property was made under section 48(a)(5) (wind facility), or (ii) is solar energy property described in section 48(a)(3)(A)(i) (solar energy property) or qualified small wind energy property described in section 48(a)(3)(A)(vi) (small wind energy property). Eligible property also includes energy storage technology (as described in section 48(a)(3)(A)(ix)) "installed in connection with" such energy property.

The Proposed Rules defined "installed in connection with" for energy storage technology to demonstrate what is required for such energy storage technology to be considered eligible property under section 48(e)(3), providing that this is met if both (1) the energy storage technology and other eligible property are considered part of a single qualified solar or wind facility because the energy storage technology and other eligible property are owned by a single legal entity, located on the same or contiguous pieces of land, have a common interconnection point, and are described in one or more common environmental or other regulatory permits; and (2) the energy storage technology is charged no less than 50 percent by the other eligible property.

The Proposed Rules also added a safe harbor, which would deem the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind facility (in kW AC) or solar facility (in kW direct current (DC)).

A commenter stated that the last sentence relating to the safe harbor appears to have the phrases "power rating" and "capacity rating" reversed, and to have omitted how energy storage is measured. The commenter stated that energy storage is measured in kWh, a measure of energy. A generating facility such as a solar or wind farm produces power, measured in kW. The commenter believes that the apparent intended meaning of the sentence would be better rendered with: "The

Treasury Department and the IRS also propose to add a safe harbor, which would deem the energy storage technology to be charged at least 50 percent by the facility if the [capacity] rating of the energy storage technology [(in kWh)] is less than 2 times the [power] rating of the connected wind facility (in kW AC) or solar facility (in kW DC)." The Treasury Department and the IRS considered this comment, but the final regulations do not adopt the commenter's suggestion.² For energy storage, the power rating (measured in kilowatts) indicates how much power can flow into or out of the battery in any given instant. It is similar to the capacity rating of a solar or wind facility, which indicates how much power can theoretically come out of the solar or wind facility in any given instant. In this context, the Treasury Department and the IRS accurately referred to the "power rating" of the energy storage technology.

Additionally, a couple of commenters requested that the Treasury Department and the IRS eliminate the requirement that energy storage technology be charged at least 50 percent by other eligible property. These commenters point to the general language in sections 48(a)(2)(A)(i)(VI) and 48(c)(6) on energy storage technology and argue against including the charging requirement for section 48(e). One commenter said there is no statutory basis to require energy storage technology to be charged by other eligible energy property and this goes against Congressional intent. Another commenter said this rule may set a problematic and inequitable precedent in the context of the underlying section 48 credit, which Congress deliberately moved away from this standard in the IRA to better promote the benefits of energy storage, and that the standard for storage inclusion should not be more burdensome for environmental justice communities or Tribes than for other projects seeking the section 48 credit.

The general language in sections 48(a)(2)(A)(vi) and 48(c)(6) describing energy storage technology eligible for the section 48 credit differs from what Congress included when describing energy storage technology eligible for a section 48(e) Increase. Eligible property as described in section 48(e)(3) includes

² The commenter correctly identified that the Proposed Rules omitted how energy storage is measured. The omission was an error, and the Treasury Department and the IRS issued a correction to the Proposed Rules published in the **Federal Register** (88 FR 41340) on June 26, 2023, to clarify that the power rating of the energy storage technology is measured in kW. The final regulations incorporate this correction.

energy storage technology (as described in section 48(a)(3)(A)(ix)) installed *in connection with* other eligible energy property. The use of the phrase “in connection with” limits the energy storage technology eligible for a section 48(e) Increase to energy storage that is installed in connection with the eligible solar or wind facility. The general energy storage technology language in section 48 includes no such limiting language. As required by the statute, the Treasury Department and the IRS determined that the proposed rule serves to ensure that energy storage technology eligible for a section 48(e) Increase has a sufficient nexus to the eligible property. The Treasury Department and the IRS provide taxpayers with the safe harbor described earlier as a means of deeming the energy storage technology as satisfying the requirement that it be charged no less than 50 percent by the other eligible property. The Proposed Rule applies uniformly to all taxpayers seeking an allocation of Capacity Limitation. Therefore, the final regulations retain the requirement that the energy storage technology must be charged no less than 50 percent by the other eligible property. However, to provide additional guidance on the application of this standard, the final regulations clarify that “50 percent” is based on an annual average.

Another commenter suggested eliminating the co-location requirement applicable to energy storage technology because the language of the statute can and should be interpreted to include storage projects that have firm, contractual offtake agreements with offsite solar or wind projects, and that these projects would be located within the same balancing authority, ensuring that all benefits are local. The final regulations do not adopt the commenter’s suggestion because the Treasury Department and the IRS view the Proposed Rule that the energy storage technology be located on the same or contiguous pieces of land as the other eligible property as consistent with the statutory requirement that limits energy storage technology eligible for a section 48(e) Increase to only energy storage technology that is installed in connection with other eligible property.

Finally, one commenter requested clarification that the power rating of connected energy storage technology will not be counted against a facility’s Capacity Limitation allocation. Because the final regulations, consistent with the Proposed Rules, define a qualified solar or wind facility eligible for a Capacity Limitation without reference to energy

storage technology, the Treasury Department and the IRS believe this clarification in the final regulations is unnecessary.

A few commenters also requested that final regulations expand the definition of “in connection with” under section 48(e)(3)(B) applicable to energy storage technology to include interconnection property under section 48(a)(8), so that interconnection costs are eligible for purposes of calculating the section 48(e) Increase.

Section 48(e)(3)(B) provides that energy storage technology defined under section 48(a)(3)(A)(ix) installed in connection with eligible solar or wind property described in section 45(d)(1) or section 48(a)(3)(A)(i) or (vi) is eligible property for purposes of calculating the section 48(e) Increase. Neither section 48(e)(3)(B) nor any other provision applicable to section 48(e) includes interconnection property or costs in the definition of eligible property. Therefore, the final regulations do not adopt these commenters’ suggestion.

IV. Location

The Proposed Rules provided that a qualified solar or wind facility is treated as “located in a low-income community” or “on Indian land” under section 48(e)(2)(A)(iii)(I) or located in a geographic area under the Additional Selection Criteria (see part VII of this Summary of Comments and Explanation of Revisions section) if the facility satisfies the nameplate capacity test (Nameplate Capacity Test).

Under the Nameplate Capacity Test, a facility that has nameplate capacity (for example, wind and solar facilities) is considered located in or on the relevant geographic area if 50 percent or more of the facility’s nameplate capacity is in a qualifying area. A facility’s nameplate capacity percentage is determined by dividing the nameplate capacity of the facility’s energy-generating units that are located in the qualifying area by the total nameplate capacity of all the energy-generating units of the facility.

Nameplate capacity for an electricity generating unit means the maximum electricity generating output that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. Energy-generating units that generate DC power before converting to AC (for example, solar photovoltaic) should use the nameplate capacity in DC, otherwise the nameplate capacity in AC should be used (for example, wind facilities). Where applicable, the International Standard

Organization conditions are used to measure the maximum electricity generating output or usable energy capacity. The nameplate capacity of any energy storage technology installed in connection with the qualified solar or wind facility does not affect the assessment of the Nameplate Capacity Test.

A few commenters noted concerns on the Nameplate Capacity Test and what it means to be “located in.” Another commenter suggested that the Nameplate Capacity Test should provide maximum flexibility. This commenter noted that Tribal lands are often not contiguous, and that new housing is limited so it is often off-reservation and there are also issues of right of way.

The Nameplate Capacity Test to determine the location of a facility already inherently provides flexibility because it only requires that 50 percent or more (rather than a larger percentage) of the facility’s nameplate capacity be in a qualifying area. The Treasury Department and the IRS concluded that a 50 percent standard is a reasonable standard, which strikes the right balance between providing flexibility to taxpayers and ensuring that statutory requirements are satisfied. Additionally, this standard is familiar to taxpayers because it is the same standard that is used to determine whether a facility is located in an energy community under Notice 2023–29, 2023–20 IRB 1.

Other commenters had concerns about the use of AC and DC. These commenters said that the Treasury Department and the IRS should update the Proposed Rules to clarify that the use of DC is limited to project location and does not apply to the maximum output of a qualified facility. One commenter also added that the Treasury Department and the IRS should update the Proposed Rules to clarify that an allocation will not be reduced if a qualified facility’s AC output is less than the facility’s DC output.

Additionally, a few commenters suggested that the nameplate capacity for both wind and solar facilities should be based on AC as the statute indicates and questioned the differing standard.

In response to these comments, the Treasury Department and the IRS added language in the final regulations to clarify that the Nameplate Capacity Test only applies for purposes of determining whether a facility is located in a qualifying area. The Treasury Department and the IRS did not modify the Nameplate Capacity Test to remove the reference to DC for measuring the nameplate capacity of a solar facility because nameplate capacity for a solar

facility is appropriately measured in DC. Solar facilities produce electricity in DC, which is then converted to AC for end use. Conversely, wind facilities produce electricity in AC.

V. Financial Benefits for Category 3 and Category 4 Allocations

Section 48(e)(2)(D) provides that “electricity acquired at a below market rate” will not fail to be taken into account as a financial benefit. The Proposed Rules provided definitions of the terms “financial benefit” and “electricity acquired at a below market rate” under section 48(e)(2)(D), as well as a manner to apply such definitions, appropriately, to qualified low-income residential building projects (section 48(e)(2)(B)) and qualified economic benefit projects (section 48(e)(2)(C)).

A. Financial Benefits for Qualified Low-Income Residential Building Projects

For a facility to be treated as part of a qualified low-income residential building project, section 48(e)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a Qualified Residential Property. The Proposed Rules reserved allocations under this category exclusively for applicants that would apply the financial benefits requirement under Category 3 in the following manner.

The Proposed Rules provided that financial benefits can be demonstrated through net energy savings as defined later. At least 50 percent of the financial value of net energy savings would be required to be equitably passed on to building occupants. This requirement would recognize that not all the financial value of the net energy savings can be passed on to building occupants because a certain percentage can be assumed to be dedicated to lowering the operational costs of energy consumption for common areas, which benefits all building occupants. The Proposed Rules provided that applicants must equitably pass on net energy savings by distributing equal shares among the Qualified Residential Property's units that are designated as low-income under the covered housing program, or by distributing proportional shares based on each dwelling unit's electricity usage.

The Proposed Rules accounted for the specific nature of facilities serving low-income residential buildings and facility ownership, as the facility may be third-party owned or commonly owned with the building.

In scenarios where the facility and the Qualified Residential Property have the

same ownership, the Proposed Rules defined the financial value of net energy savings as the financial value equal to the greater of: (1) 25 percent of the gross financial value of the annual energy produced or (2) the gross financial value of the annual energy produced minus the annual costs to operate the facility. Gross financial value of the annual energy produced is calculated as the sum of (a) the total self-consumed kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's metered price of electricity and (b) the total exported kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's volumetric export compensation rate for solar or wind kilowatt-hours. The annual operating costs are calculated as the sum of annual debt service, maintenance, replacement reserve, and other costs associated with maintaining and operating the qualified solar or wind facility.

If the facility and building are commonly owned, a signed benefit-sharing agreement between the building owner and the tenants would be required. The Proposed Rules requested comments on how to adjust definitions of gross financial value to account for scenarios in which building occupants are compensating the facility owner for energy services.

In scenarios where the facility and the Qualified Residential Property have different ownership and the facility owner enters into a power purchase agreement (PPA) or other contract for energy services with the Qualified Residential Property owner, the Proposed Rules defined net energy savings as equal to the greater of: (1) 50 percent of the financial value of the annual energy produced by the facility that accrues to the owner of the Qualified Residential Property in the form of utility bill credit and/or cash payments for net excess generation or (2) the financial value of the annual energy produced by the facility that accrues to the owner of the Qualified Residential Property in the form of utility bill credit and/or cash payments for net excess generation minus any payments made by the building owner to the facility owner for energy services associated with the facility in a given year. In these scenarios, the facility owner must enter into an agreement with the building owner for the building owner to distribute the savings to residents.

1. Requirement To Equitably Allocate Financial Benefits

Two commenters provided that under certain State and Federal housing programs, housing authorities receive utility subsidies based on historical utility costs. These commenters also noted that a housing authority may have their utility allowance decreased if the housing authority reduces their utility costs through savings from the facility. Additionally, these commenters stated that the department managing a housing authority can claim a portion of net metering credits if the housing authority receives net metering credits. One of the commenters, therefore, requested that the Treasury Department and the IRS draft a rule that the housing authority be able to retain 100 percent of net metering credits, regardless of the energy savings received from the program and the facility. The other commenter requested that the Treasury Department and the IRS waive the requirement for public housing authorities to pass financial benefits along to residents. This commenter stated that in public housing, all benefits ultimately accrue to the benefit of residents. Another commenter stated that HUD-utility allowances may need to be increased for buildings if net benefits are to be shared between the owner and tenants, and the external financing is used to build the system, such that additional proceeds will be needed to pay debt service on the energy.

The Treasury Department and the IRS considered these comments but did not adopt them in the final regulations because section 48(e)(2)(B) requires that the financial benefits of the electricity produced by the facility be allocated equitably among the occupants of the Qualified Residential Property.

One commenter warned the Treasury Department and the IRS to guard against owner/related party financing designed to capture all or most of the energy savings benefits by artificially manipulating their terms of the financing to capture the savings during the term of the credit, and against owners seeking to purchase energy wholesale and mark up value to tenants to artificially inflate the value of the energy savings. The commenter says the value of the energy bill savings should be indexed against the approved meter rate as authorized by the relevant public service commission (where applicable) or some other third-party verifiable rate unrelated to the project sponsor or affiliates.

In response to this comment, the Treasury Department and the IRS have

maintained the baseline of 50 percent of the net energy savings calculated from a minimum of 25 percent of the gross financial value of electricity produced as described in the Proposed Rules to ensure the statutory obligation that financial benefits be allocated to tenants. The final regulations clarify, consistent with the comments received, that gross financial value includes the sale of any renewable energy credits or other attributes associated with the facility's production, if separate from the metered price of electricity or export compensation rate.

Many commenters requested that the final regulations provide guidance for facility owners to prove equitable distribution of benefits to tenants. A few commenters stated that in certain cases, like a project using community renewable energy facility rate structures offered by utilities, separately metered residents can subscribe voluntarily, and some residents may choose not to subscribe. Therefore, these commenters requested that the regulations allow for a reduction in the equitable distribution requirement on a pro-rata basis by the (number) of residents who choose not to subscribe. However, one of the commenters recommended a minimum threshold of resident participation, suggesting 50 percent participation at placed in service, for the distribution of benefits to be considered equitable.

In consideration of these comments, the Treasury Department and the IRS have clarified in the final regulations that for any occupant(s) that choose to not receive utility bill savings, the portion of the financial value that would otherwise be distributed to non-participating occupants must be instead distributed equitably to the participating occupants. Additionally, no less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the facility to utilize this method of benefit distribution.

2. Gross Financial Value

A few commenters suggested changes to the definition of gross financial value. One commenter stated that for purposes of building occupants compensating the facility owner, gross financial value could be calculated based on the average monthly local utility rate for either residential or low-income residential (from the previous calendar year or trailing 12 months) multiplied by the average residential kilowatt hour usage per square foot multiplied by the per square footage of rentable residential space in the building. The commenter

provided variation and detail on how this would be accomplished.

Another commenter requested clarification on how to define "gross financial value." The commenter stated that it is unclear whether the "price of electricity" means only the energy costs or also all the delivery costs and other charges that may be charged on a per kilowatt hour basis. Additionally, the commenter noted that the "export compensation rate for . . . kilowatt hours" may not be solely tied to the energy but may also include additional compensation such as the value of renewable energy certificates or other incentives provided by States.

Finally, one commenter stated that calculating the "gross financial value of the annual energy produced," as defined in the Proposed Rules, would be difficult for buildings due to the complexity of electricity rate structures in many jurisdictions, which may vary depending on the time of day and time of year.

The Treasury Department and the IRS considered the commenters' suggestions but generally did not adopt them because the Proposed Rules provide a clear and accurate framework for defining "gross financial value." However, the final regulations clarify, consistent with the comments received, that gross financial value includes the sale of any renewable energy credits or other attributes associated with the facility's production, if separate from the metered price of electricity or export compensation rate. The same definition of gross financial value applies regardless of the ownership structure.

One commenter requested clarification about whether front of the meter (FTM) volumetric tariff compensation rate, such as Connecticut's Residential Renewable Energy Solutions Buy-All-Sell-All tariff (BASA Tariff), may be included in the gross financial value calculation when the facility and Qualified Residential Property have the same ownership. The commenter believes that the BASA tariff \$/kWh revenue would be included in the definition of gross financial value because it is included in the definition as part of "the total exported kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's volumetric export compensation rate for solar."

The Treasury Department and the IRS considered this comment but ultimately concluded that additional clarification in the final regulations to address specific State tariff rates is not necessary. The definition of gross financial value included in the final regulations, consistent with the

Proposed Rules, already includes the total exported kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's volumetric export compensation rate for solar or wind kilowatt-hours, which would include compensation from the electricity produced from the facility.

Another commenter stated that it is not appropriate to define financial benefits in terms of the value of energy savings. Instead, this commenter claimed that the only financial benefit that can be generated by facilities in Category 3 would be through net metering, where the facility generates excess capacity that is sold back to the grid for off-site consumption. The commenter also implied that, in the case of net metering credits, the credit would go directly to the tenants, and that the building owner will never receive any financial benefit.

The Treasury Department and the IRS considered this comment but did not adopt it in the final regulations. The Treasury Department and the IRS determined that gross financial value from the electricity produced from a qualified solar or wind facility may stem from self-consumed kilowatt-hours produced by the facility, exported kilowatt-hours produced by the facility, or the sale of any renewable energy credits or other attributes associated with the facility's production (if separate from the metered price of electricity or export compensation rate). Further, financial value of energy savings from the electricity produced is a financial benefit of the electricity produced by the facility and section 48(e)(2)(B)(ii) provides that the financial benefits of the electricity produced by such facility must be allocated equitably among the occupants of the dwelling units of a Qualified Residential Property.

3. Net Financial Value

One commenter stated that rather than creating two methods, the Treasury Department and IRS should adopt a single method to calculate net energy savings. The commenter stated that for both scenarios (commonly owned and third-party owned), the final regulations should adopt the method from the Proposed Rules that was only proposed to apply when the facility and Qualified Residential Property have the same ownership. The Treasury Department and the IRS considered this comment but did not adopt it in the final regulation because it is appropriate for "net financial value" to be defined differently depending on whether the facility is commonly owned or third-party owned because in third-party

owned scenarios calculating the facility's levelized cost of energy would be overly complex and potentially vulnerable to manipulation. Instead, relying on the PPA rate is simpler and more reliable. The final regulations clarify that in case of a commonly owned facility "net financial value" is defined as the gross financial value of the annual energy produced minus the annual average (or levelized) cost of the qualified solar or wind facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility). In the case of a third-party owned facility, "net financial value" is defined as gross financial value of the annual energy produced minus any payments made by the building owner and/or building occupants to the facility owner for energy services associated with the facility in a given year.

Another commenter cited to the Connecticut's Residential Renewable Energy Solutions BASA Tariff, which involves FTM projects, and requested a change to the net financial value definition for third-party owned facilities. The commenter proposed that, to include FTM projects in Category 3, the first definition of net financial value needs to be amended to reference "the total financial value of energy produced by the facility that accrues to the owner of the qualified residential property, or the facility owner, the tenants, or a combination thereof." The commenter further provided that a set percentage can be required to be provided, like 25 percent, to the tenants, and the rest of the revenue can be allocated between the facility owner and the property owner in whatever manner is requested. This commenter also requested that the second definition of net financial value be amended to say that "the total financial value of the annual energy produced by the facility that accrues to the owner of the qualified residential property, or the facility owner, the tenants, or a combination thereof minus any payments made, or revenue allocated, to the facility owner for energy services associated with the facility in a given year" to consider solar site lease structures (for FTM project like BASA) in addition to PPAs.

Another commenter generally recommended that the Treasury Department and the IRS adopt a baseline requirement of passing on at least 25 percent of net energy savings to tenants, to ensure meaningful financial benefits are afforded to households in Category 3.

The Treasury Department and the IRS considered these comments but did not adopt them in the final regulations and maintain the baseline of 50 percent of the net energy savings calculated from a minimum of 25 percent of the gross financial value of electricity produced as described in the Proposed Rule, which is a higher value of meaningful financial benefits than the commenter suggests. The other 50 percent of the net energy savings can be assumed to be dedicated to lowering the operational costs of energy consumption for common areas, which benefits all building occupants. The Treasury Department and the IRS determined that the baseline of 50 percent of the net energy savings is consistent with the statutory intent for Category 3, which is to provide the financial benefits of the electricity produced directly to building occupants.

4. Single Family Housing

One commenter generally noted that the financial benefit definitions for Category 3 only contemplate multi-family housing. This commenter requests clarification for Tribal housing programs, which the commenter states primarily consist of Tribal single-family residences that would have their own meter.

In response to the comment, the Treasury Department and the IRS have modified the financial benefit definition to provide clarity for single-family residences that meet the criteria of a Qualified Residential Property. The final regulations state that a Qualified Residential Property could either be a multifamily rental property or single-family rental property. The same rules for financial benefits for Category 3 apply to both property types.

5. Benefits Sharing Agreement

Several commenters expressed concern over the signed benefits sharing agreement between the building owner and the tenants if the facility and building are commonly owned. Generally, commenters suggested the elimination of this requirement. A few commenters noted the administrative burdens and challenges on the building owner in obtaining signed agreements from all tenants. Likewise, another commenter said that this requirement is overly burdensome, and that requiring each resident to voluntarily sign a benefits sharing agreement would prevent a facility from proceeding. This commenter also noted the possibility that requiring such an agreement may conflict with consumer protection laws, and another commenter agreed suggesting certain customer protection

disclosures may be required. One commenter also stated that this process would potentially present a 'false promise' to residents should the project not be selected for an allocation. Some commenters offered alternatives to a signed benefits sharing agreement. Several commenters recommended that the facility owner or building owner provide notice to all building occupants of the expected financial benefits and the proposed method of allocating the benefit. Similarly, another suggested that owners be required to develop a benefits sharing plan that must be communicated to tenants, with owners ensuring that sufficient time is given for tenants to provide feedback. Finally, a few commenters suggested that applicants instead submit a self-attestation form certifying that they will equitably distribute benefits in accordance with the standards set forth in HUD guidelines.

One commenter supported the requirement for a signed benefits sharing agreement. However, the commenter requested additional guidance on the contents of such a benefits sharing agreement, including specific required consumer protection disclosures, such as resources tenants can access to better understand or renegotiate the agreement. This commenter additionally encouraged the Treasury Department and the IRS to adopt a model affidavit or agreement between building owners and tenants based on the options considered and used in California's Solar on Multifamily Affordable Housing (SOMAH) program. Another commenter generally asked for clarification on how to prove or attest that financial benefits are due to cost savings associated with solar.

Several Tribal commenters requested that facilities owned by Tribes or Tribal housing authorities should be presumed to result in an economic benefit to Tribal members who reside on the reservation or who live in Tribal-owned housing, and thus should not be required to enter into a benefits sharing agreement with Tribal members to show the financial benefit to Tribal members.

The Treasury Department and the IRS agree that requiring a signed benefits sharing agreement between the building owner and the tenants is burdensome and not necessary to demonstrate compliance with Program requirements. Instead, to better achieve the goal of verifying Program compliance and to provide clarification to applicants regarding how they can demonstrate that statutory requirements are met the final regulations require that facility owners for all Category 3 facilities must

prepare a Benefits Sharing Statement, which must include (1) a calculation of the facility's gross financial value using the method described in the final regulations, (2) a calculation of the facility's net financial value using the method described in the final regulations, (3) a calculation of the financial value required to be distributed to building occupants using the method described in the regulations, (4) a description of the means through which the required financial value will be distributed to building occupants, and (5) if the facility and Qualified Residential Property are separately owned, indication of which entity will be responsible for the distribution of benefits to the occupants. In addition, the Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

6. Impact of Metering on Delivery of Financial Benefits

Regardless of ownership, residential buildings may have master-metered or sub-metered utilities. Therefore, the Proposed Rules provided that for sub-metered buildings, the tenants must receive the financial value associated with utility bill savings in the form of a credit on their utility bills. HUD has issued guidance for residents of sub-metered HUD-assisted housing that participate in community solar, providing an analysis of how community solar credits may affect utility allowance and annual income for rent calculations.³ The Proposed Rules provided that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

The Treasury Department and the IRS are aware that in some States or jurisdictions it may not be administratively, or legally, possible to apply utility bill savings on residents' electricity bills. The Proposed Rules requested comments on this issue and how financial benefits, such as services and building improvements, can be provided to residents in such residential buildings.

For master-metered buildings, the Proposed Rules provided that because residents do not have individually metered utilities and do not receive utility bills, the building owner must pass on the savings through other means, such as by providing certain benefits to the building residents beyond those provided prior to the qualified solar or wind facility being placed in service. HUD has issued guidance for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits accrued from an investment in solar energy generation.⁴ The Proposed Rules provided that applicants follow the HUD guidance and future HUD guidance on this issue to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted.

Many commenters noted that it is difficult for utility bill credits to be distributed to residents even in sub-metered buildings and suggested that the financial benefit structure available under the Proposed Rules for master metered buildings be similarly applied to sub-metered buildings. Several commenters noted that it is not possible to distribute utility bill credits to residents in sub-metered buildings because most States lack legislation or regulations governing the allocation of solar credits to consumer utility bills, and, one commenter further stated, that even in States that do, the utilities may not have the administrative infrastructure to allocate credits across bills. Another commenter supported this by stating that only 21 States and DC have statewide policies that support sharing solar savings in multi-family housing in the form of utility bill credits. Many commenters also voiced general concern that the process of distributing utility credits is administratively burdensome on the owner of the facility. One commenter stated that many of the residents who would be eligible to receive bill credits on their utility bills will already receive a subsidized electricity price from their distribution company, which would result in their cost of power already being lower than other consumers in their service territory. This commenter asserts that it be more economical to "sell" or "allocate" the bill credits to another consumer in the same service territory and offset their higher energy

costs and provide a greater overall financial benefit to tenants. The commenter states that this system would be similar to the process proposed for master-metered buildings.

Many commenters asked for flexibility in providing financial benefits to residents. A few commenters suggested that metering configuration should not be regarded for purposes of defining financial benefits. One commenter stated that financial benefits should be defined by HUD, and should be applicable to all properties, regardless of whether the residential unit is sub-metered or if the building is master-metered. This commenter specifically stated that financial benefits should be allowed to accrue to the common area meters and then be disbursed equitably to occupants based upon any approved method—without regard to metering configuration and without requiring a bill credit allocation method. Several other commenters suggested, as alternatives, services such as free or reduced cost high speed internet, shuttle services, public transportation subsidization, job training programs, community events, and building improvements as alternatives to be allowed instead of utility bill credits.

One commenter suggested that if utility bill credits are not available, applicants could determine a baseline year and calculate the average price per kilowatt hour for that year and then for all subsequent years (after placed in service date) and multiply it by the kilowatt hours of production multiplied by an annual acceptable adjustment. The commenter stated that net energy savings from a given period (month, quarter, or year) would then be required to be spent on residential service programs (available to the largest group of residents), facility upgrades benefiting residents, and other services that benefit a large group of residents.

A few commenters, although supportive, noted that the HUD guidance allowing for services or other benefits to be provided in master metered buildings, in lieu of direct financial savings to tenants, is limited in scope. One commenter pointed out that the HUD memorandum cited in the Proposed Rules only covers developments subsidized through HUD's multifamily programs. This commenter noted that this guidance does not cover HUD's Project Voucher Program and that the USDA does not provide matching guidance for the USDA supported housing. Therefore, this commenter suggests that the regulations directly define financial benefits for master metered housing,

³ U.S. Department of Housing and Urban Development, Treatment of Community Solar Credits on Tenant Utility Bills (July 2022); MF Memo re Community Solar Credits, (https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_Community_Solar_Credits_signed.pdf) and Community Solar Credits in PIH Programs (August 2022), (https://www.hud.gov/sites/dfiles/documents/Solar%20Credits_PH_HCV.pdf).

⁴ U.S. Department of Housing and Urban Development, Treatment of Solar Benefits in Mastered-metered Buildings (May 2023), MF Memo re Community Solar Credits in MM Buildings.pdf (https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf).

rather than by reference to memoranda, so that this provision is clearly applicable to all master metered affordable housing developments. Similarly, one commenter stated that the types of benefits provided under the HUD guidance for community solar programs should be available as a mechanism to distribute financial benefits for all Category 3 applicants.

Similarly, another commenter noted that certain financial benefits distributed directly to residents may be includable in a household's annual income. The commenter noted that HUD has determined that providing financial benefits in the form of gift cards or cash payments would generally be included in income. Therefore, this commenter supported the inclusion of language in the rules that would state that financial benefits can include credits on utility bills or could include benefits that can be equitably provided to residents but are not direct payments to the residents, such as resident services, free or reduced cost internet, job training, or building upgrades. However, another commenter requested the opposite, stating that direct payments or other financial benefits like rent reductions should be the preferred form of benefits.

In response to these comments, the Treasury Department and the IRS modified the Proposed Rules in the final regulations to provide maximum flexibility to equitably allocate financial benefits to residents while also ensuring the statutory requirements are satisfied. Accordingly, the final regulations provide that financial value can be distributed to building occupants via utility bill savings or through different means, and depending on the method selected, the final regulations prescribe the requirements that must be met. For purposes of this via utility bill savings provision, financial benefits will be considered to be equitably allocated if at least 50 percent of the financial value of the energy produced by the facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48(e)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. For any occupant(s) that choose to not receive utility bill savings (for example, exercise their right to "opt out" of a community solar subscription in applicable jurisdictions), the portion of the financial value that would otherwise

be distributed to non-participating occupants must be instead distributed to all participating occupants. No less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the facility to utilize this method of benefit distribution. If financial value is not distributed via utility bill savings, financial benefits will be considered to be equitably allocated if at least 50 percent of the financial value of the energy produced by the facility is distributed to occupants using one of the methods described in HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48(e)(2)(B).

With respect to allocating financial value via utility bill savings, commenters addressed the language in the Proposed Rules that provided an alternative method for net energy savings to be distributed in proportional shares based on each dwelling unit's electricity unit. The commenters stated that this method is not permitted by HUD. These commenters also proposed a third option for equitable distribution, which they claim is used in California's SOMAH program, where shares are distributed to each unit based on square footage. In response to this comment, the Treasury Department and the IRS added language in the final regulations to clarify that the financial value should be distributed in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48(e)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants.

Another commenter suggested that in a master-metered building, the facility owner be allowed to allocate the value of energy savings to the building's tenant association to distribute equally as the association sees fit. This was suggested in addition to and as alternative to the options provided in the HUD guidance.

In response to this comment, the Treasury Department and the IRS considered but did not adopt this suggestion. The Treasury Department and the IRS have provided additional clarity on the applicability of HUD guidance in the final regulations to provide flexibility to the applicant to determine the methodology most appropriate for allocation of the value of

energy savings based on the circumstances of the Qualified Residential Property. This includes options that have been determined to not affect a tenants utility allowance and annual income for rent calculations.

B. Financial Benefits in Qualified Low-Income Economic Benefit Projects

For a facility to be treated as part of a qualified low-income economic benefit project, section 48(e)(2)(C) requires that at least 50 percent of the financial benefits of the electricity produced by the facility be provided to qualifying low-income households. To satisfy this standard, the Proposed Rules required that the facility serve multiple households and at least 50 percent of the facility's total output is distributed to qualifying low-income households under section 48(e)(2)(C)(i) or (ii). In addition, to further the overall goals of the Program, the Proposed Rules reserved allocations under this category exclusively for applicants that would provide at least a 20-percent bill credit discount rate for all such low-income households. The Proposed Rules defined a "bill credit discount rate" as the difference between the financial benefit distributed to the low-income household (including utility bill credits, reductions in the low-income household's electricity rate, or other monetary benefits accrued by the household) and the cost of participating in the Program (including subscription payments for renewable energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the low-income household. The bill credit discount rate can be calculated by starting with the financial benefit distributed to the low-income household, subtracting all payments made by the low-income customer to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the low-income household.

1. Category 4 Community Solar

Because of the financial benefits requirements that are structured for community solar projects, several commenters thought that the Proposed Rules too narrowly limited Category 4. Commenters noted that the Proposed Rule precluded otherwise eligible facilities from qualifying under Category 4, including behind the meter (BTM) facilities that meet the Category 4 requirements. One commenter suggested that Category 4 should be open to projects that directly benefit Tribal member small businesses. Similarly, a

commenter noted that Category 4 should be open to all projects, whether FTM or BTM, that directly benefit Tribal member small businesses (where the small business can apply for the section 48 credit) or Tribal enterprises, located on Tribal lands, that may want to deploy commercial roof-top or ground-mount solar (such as canopies) to offset energy costs, provide energy security, or support job creation. Another commenter also criticized the narrow nature of Category 4 noting that the Proposed Rules have made eligibility for Category 4 solely applicable to multifamily and community solar.

Some commenters also made suggestions on how to define Category 4. One commenter suggested that projects under Category 4 allow only on-site commercial and industrial projects to reach overall deployment and savings goals. Similarly, one commenter requested that Category 4 incentivize larger agribusiness projects that employ residents living in these areas and working at these agribusiness facilities (or similar industries) and stated that the 50 percent household requirement is too complicated. This commenter felt that residential facilities are being prioritized in categories 1, 3, and 4, and, therefore, that Category 4 should be modified to incentivize facilities supplying power to businesses but providing financial benefits to low-income residents in the same area. Another commenter recommended that the Category 4 allocation give priority to qualified low-income benefit projects less than 1 MW that are located in low-income communities.

The Treasury Department and the IRS recognize the commenters' concerns that Category 4 is limited. However, projects must meet the statutory requirements under section 48(e)(2)(C) to be considered eligible for Category 4. To ensure these requirements are not too narrowly construed, the Treasury Department and the IRS adopted a change to the FTM definition in the final regulations applicable to Category 4 to ensure that projects meeting the intent of Category 4, as that intent was described in the Proposed Rules, are not unintentionally disqualified due to an overly strict definition of FTM. The final regulations clarify that a facility is FTM if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. The final regulations also clarify that for the purpose of Category 4, a qualified solar or wind facility is also

FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.

However, the Treasury Department and the IRS emphasize that this does not change the intent of Category 4 that projects falling under the definition of BTM are not eligible for Category 4, and that financial benefits to eligible low-income households can only be delivered via utility bill savings. Based on industry and market research, community solar programs primarily use utility bill savings to deliver financial benefits to households. For this reason, the Treasury Department and the IRS have defined financial benefits in this manner.

At least one other commenter requested allowing public and affordable housing buildings to participate in Category 4 through the use of geo-eligibility to establish qualification for a Category 4 site. One of these commenters mentioned the process being adopted in New York for its Inclusive Community Solar Adder, which will allow anyone who lives in a designated "Disadvantaged Community" to qualify upon demonstration that their address is in one of the so-called DAC zones. This commenter noted that the Climate and Economic Justice Screening Tool (CEJST) map is already being used to qualify sites for Category 1 participation.

Because section 48(e)(2)(C) provides requirements for ensuring that the financial benefits of the electricity produced by a qualified solar or wind facility are provided to qualifying households, establishing categorical eligibility for Category 4 based on geographic location of the project is inappropriate. Similarly, as discussed in more detail later under part V.B.6. of this Summary of Comments and Explanation of Revisions section, qualifying households based on geography is also inappropriate because of statutory requirements. Similarly, establishing eligibility for multifamily buildings (including master-metered buildings), agribusinesses, or other arrangements that do not directly result in utility bill savings for low-income households is also inappropriate. As discussed earlier, financial benefits to eligible low-income households can only be delivered via utility bill savings under these regulations. Therefore, the final regulations do not adopt these comments.

2. Twenty Percent Bill Credit Discount

One commenter urged the Treasury Department and the IRS to require a

higher bill discount rate than 20 percent, stating the programs in Illinois, Massachusetts, and Maryland already provide discounts at or above the proposed threshold level. This commenter believes that the increased credit for qualified low-income economic benefit projects should allow for an increase in the amount of financial benefit delivered to low-income customers in these markets.

Another commenter supported the method of requiring financial benefits in the form of bill credits, but suggested an additional requirement to be included in cases where beneficiaries have no cost of participation through a subscription fee. In this situation, the commenter suggested that the bill credit discount rate should be calculated as the total savings on a customer's utility bill, annually, divided by the total value of the electricity produced by the project, as measured by the income to the project paid by the utility, independent system operator (ISO), or other customer procuring power from the project.

Another commenter requested clarification on the interpretation of bill credit discount rate, which the commenter read to mean that 20 percent of the total export credit rate would be the minimum required revenue share with the low-income customer, rather than 20 percent of the customer's pre-solar electricity bill. This commenter also requested clarification as to whether the calculation will be annual, and whether the form of benefits must specifically be "utility bill credits" or could be other documented financial benefits provided to tenants.

One commenter stated that a 20 percent cost savings requirement will likely be unattainable in some energy markets, specifically States and localities that have less amicable laws and utility regulations for community solar. This commenter recommended a 15 percent cost savings for 2023, stating that 15 percent is still on the higher end of the current industry average for community solar cost savings. This commenter also requested that the benefit should be an annual reduction (of 15 percent) because there can be cost savings fluctuations throughout a calendar year. Although the Treasury Department and the IRS considered various percentages for required cost savings between 5 percent and 20 percent, based on a review of various State program rates and market information, the Treasury Department and the IRS have decided to maintain the 20 percent rate. This rate will allow for the greatest savings to the low-income households and further the

requirement of section 48(e)(2)(C) that 50 percent of the financial benefits of the electricity produced by the facility are provided to such households. Additionally, in response to comments, the Treasury Department and the IRS clarified that the 20 percent bill discount is an annual savings.

Tribal commenters requested that projects owned by Tribes or Tribal housing authorities should be presumed to result in an economic benefit to Tribal members who reside on the reservation or who live in Tribal-owned housing.

The Treasury Department and the IRS decline to adopt the suggestion of presumption of economic benefit. The statutory requirements for the Program require that an qualified low-income economic benefit project serves multiple households and at least 50 percent of the facility's total output is distributed to qualifying low-income households under section 48(e)(2)(C). To help applicants meet this requirement, the Treasury Department and the IRS have provided in the final regulations an illustrative list of categorical eligibility options to provide maximum flexibility to qualify low-income households. This includes eligibility based on Tribal programs and housing programs, among many other options.

3. Single Household

Several commenters have requested that the Treasury Department and the IRS add eligibility under Category 4 for projects that benefit one single-family residence where 100 percent of the facility's total output is distributed to the qualifying low-income household residing at that residence, provided that the project meets all other Category 4 criteria, and the facility provides at least a 20-percent utility bill savings for such low-income household. Several commenters also added that Congress's use of the term "households" is more properly read as a programmatic term applying to all low-income households that can benefit from the Program, rather than a narrower reading suggested in the Proposed Rules. One commenter argued that this narrow reading (excluding single family households from Category 4) would unnecessarily and unfairly discriminate against certain households.

After consideration of all these comments, the final regulations do not adopt the commenter's suggestion. Section 48(e)(2)(C) applicable to Category 4 facilities requires that at least 50 percent of the financial benefits of the electricity produced by the facility be provided to "households" with certain income levels. Because the statute uses the plural term

"households," the Treasury Department and the IRS determined that providing financial benefits to a single household is insufficient to meet the requirements of section 48(e)(2)(C) applicable to Category 4 facilities.

4. Utility Bill Savings

Several Tribal comment letters requested that Category 4 should not be limited to projects that provide only individual benefits or community-scale projects. These commenters urged the Treasury Department and the IRS to expand the definition of "financial benefit" to include community-wide benefits, such as direct benefits to the Tribal government from the additional tax credit (especially for projects owned by the Tribe and receiving elective payments from the Treasury Department), job creation and economic benefits to low-income Tribal members. These same commenters also stated that Category 4 should be open to all projects, regardless of metering, that directly benefit Tribal member small businesses (where the small business can apply for the section 48 credit) or Tribal enterprises located on Tribal lands. Additionally, some of the Tribal comments requested flexibility for Tribal housing or economic development projects that are serving Tribal lands and Tribal households to define benefits collectively (rather than individually), because many of the Tribal commenters are located in States that do not allow for community solar. These commenters stated that they will have to negotiate directly with a utility to deploy community scale projects on the Reservation.

To promote more flexibility with respect to financial benefits requirements in Category 4, a few commenters requested that the Treasury Department and the IRS extend the same flexibility is provided for Category 3 projects regarding financial benefits to Category 4 projects as well. These commenters requested that a manner other than bill credits be permitted to provide financial benefits directly to low-income subscribers in Category 4 that still meets the nominal 20 percent discount requirement, like gift cards, direct payments, or checks. One commenter asked whether master-metered projects are eligible for Category 4 if a project adheres to the same HUD guidance used for Category 3 projects.

The Treasury Department and the IRS considered the comments requesting expansion or flexibility with respect to financial benefits for Category 4 to allow methods other than utility bill savings but ultimately decided not to adopt the

commenters' suggestions in these final regulations. Requiring financial benefits via utility bill savings is the only means through which the Treasury Department and the IRS can ensure that the provision of financial benefits to qualifying households is sufficiently regulated such that the requirements of section 48(e)(2)(C) are satisfied. Therefore, the final regulations clarify that financial benefits for Category 4 must be tied to a utility bill of a qualifying household. The Treasury Department and the IRS may consider other methods of determining Category 4 financial benefits in future years.

The final regulations, however, address comments regarding the potential unsuitability of the proposed rules to net-credit billing, or other structures where the qualifying household does not make a direct payment to the project owner by providing an alternative methodology for calculating a 20 percent bill credit discount rate in this scenario. In cases where the qualifying household has no or only a nominal cost of participation, the bill credit discount rate should be calculated as the financial benefit provided to a qualifying household (including utility bill credits, reductions in a qualifying household's electricity rate, or other monetary benefits accrued by a qualifying household on their utility bill) divided by the total value of the electricity produced by the facility and assigned to the qualifying household (including any electricity services, products, and credits provided in conjunction with the electricity produced by such facility), as measured by paid by the utility, ISO, or other off-taker procuring electricity (and related services, products, and credits) from the facility.

5. Fifty Percent of the Facility's Total Output to Low-Income Households

One commenter requested that the facility should not have to provide power to households, as long as the financial benefits were distributed to residents of qualifying households. In this case, the commenter stated that a non-profit organization planned to build a facility on the non-profit office building but distribute the savings the non-profit derived from the facility to the residents of apartments the non-profit administers. Similarly, another commenter noted that the use of "distribute" rather than "assigned" in the requirement in the Proposed Rules that 50 percent of the facility's total output is distributed to qualifying low-income households may imply that beneficiaries are expected to receive the physical flows of electricity from the

facility, which is not how community solar works in most cases, nor is it what the statute requires.

In response to these comments and to clarify the intent of the Proposed Rules, which was to structure Category 4 consistent with the market as it exists today (including community solar business models), the final regulations adopt the suggestion of the commenter to change “distributed” to “assigned.” Therefore, the full clause in the final regulations is “at least 50 percent of the facility’s total output must be assigned to Qualified Households.”

6. Low-Income Verification

To ensure the requirements of section 48(e)(2)(C) are met, verification of households’ qualifying low-income status is required. The Proposed Rules provided that applicants are responsible for proof-of-income verification and would be required to submit documentation upon placing the qualified solar or wind facility in service that identifies each qualifying low-income household, the output allocated to each qualifying low-income household in kW, and the method of income verification utilized.

The Proposed Rules provided that applicants may use categorical eligibility or other income verification methods to qualify low-income households. Categorical eligibility consists of obtaining proof of household participation in a needs-based Federal,⁵ State, Tribal, or utility program with income limits at or below the qualifying income level for the specific facility (qualifying program). State agencies (for example, State community solar/wind program administrators) can also provide verification of low-income status if the State program’s income limits are at or below the qualifying income level for the qualified solar or wind facility. If a household is not enrolled in a qualifying program, additional income verification methods can be used such as: paystubs, tax returns, or income verification through crediting agencies and commercial data sources. Eligibility based on the applicant (or contractors or subcontractors) collecting self-attestations from households is not permitted.

Several commenters commented on the verification methods to qualify low-income households. On self-attestation,

many commenters disagree with the Proposed Rules prohibiting eligibility based on self-attestation. Many commenters were in favor of self-attestation, which according to one commenter could include an attestation to the effect that the household either participates in one of the programs that has the relevant standard as a criterion or otherwise meets the standard to the best of the resident’s knowledge. One commenter stated that self-attestation is the fastest and most efficient way to ensure maximum low-income customer participation. This commenter noted that many customers will be skeptical of providing documents, and that the process of obtaining, processing, and verifying the documentation is administratively burdensome and time consuming. Another commenter noted a practical consideration that by accepting self-certification, households who are not yet enrolled in Federal or State energy assistance programs but are eligible or in the process of enrolling may still participate in qualified low-income economic benefit projects. Another commenter stated that only a fraction of eligible households currently participate in existing State, Federal, utility, or Tribal programs for which they are eligible, and many barriers—including knowledge, time, documentation, and language fluency—prevent many households from participating.

Some of the commenters’ recommendations also tied into the use of State programs. One commenter suggested removing the self-attestation limitation where self-attestation is permitted by State agencies. Two other commenters similarly suggested the rules accept income verification via State-program verification where States specifically accept self-attestation with one of the commenters noting that subscribers and applicants should not have to double verify a household if self-attestation is used on the State level. Another commenter encouraged that applicants be allowed to use benefit cards as sufficient evidence of participation in qualifying programs where such cards are the means by which a State makes the benefit available to participants.

Another commenter requested that the rules clarify whether the use of State-approved geo-qualification maps or CEJST are approved income verification methods and recommended that, for individuals who reside within a CEJST or Persistent Poverty County (PPC), the rules should consider allowing self-attestation as a means of income-qualification in States where it is a permissible method for income-

qualification. Another commenter asked for clarification about the interaction between this Program and State agency provided income verification, as well as Department of Energy’s (DOE) community solar subscription tool tying eligibility, initially, to LIHEAP. The commenter noted that some State agencies allow self-attestation and/or State-approved geo-qualification maps in various programs and requested that the rules allow self-attestation and geo-qualification (including both State maps and CEJST) meeting certain standards to the maximum extent allowable by law. Another commenter suggested expanding those who can provide verification to not just the State agencies but also utilities. In contrast, another commenter instead recommended removing the concept of allowing State agencies to provide verification at all and proposed adding a requirement to make clear that the requirement is on applicants to receive verification directly from the customers.

Some commenters asked for the expansion of categorical eligibility. For example, one commenter recommended that public housing, USDA Rural Development, and the Project Based Voucher Program be added to the list of categorically eligible Federal assistance programs noted in footnote 5 of the Proposed Rules. Another commenter asked if the listed methods are the only possible methods of verification or if other State-approved methods may be considered as well. Another commenter also suggested for purposes of Category 4 that the rules allow participation in more programs as proof of income and that paystubs, tax returns, and credit checks should be removed as possibilities as these could alienate low-income households. An additional commenter noted their view on the importance of protecting Tribal data sovereignty. This commenter said the rules should not tie Tribes to external sources of data. This commenter believes that self-certification as to poverty levels or other metrics by Tribes should be sufficient.

A few commenters suggested adding geographic eligibility to verify low-income status. One commenter suggested adding geographic eligibility to the “category eligibility” and “other income verification methods” to qualify low-income households, where “geographic eligibility” is defined as a household that is currently residing in a LIHTC Qualified Census Tract (LIHTC Qualified Census Tract) and where at least one adult in that household has resided for at least the previous six months. The commenter claims that the LIHTC Qualified Census Tract

⁵ Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP), Weatherization Assistance Program (WAP), Supplemental Nutrition Assistance Program (SNAP), Section 8 Project-Based Rental Assistance, and the Housing Choice Voucher Program.

household income standard is stricter than that in section 48(e)(2)(C)(ii), and thus this standard is an administratively efficient method of qualifying low-income households for a tax credit similar to the Low-Income Communities Bonus Credit. Another commenter recommended adding the physical location of the customer's home as an additional qualifying criterion, noting a reasonable criterion for inclusion as areas where at least 20 percent of the population falls below the poverty line, with prevalent harmful environmental impacts as outlined in the 2014–2018 5-year American Community Survey (ACS), conducted by the U.S. Census Bureau. Moreover, one commenter suggested including geo-qualification based on State maps and the CEJST Tool.

In contrast, one commenter supported the Proposed Rules noting that categorical income verification decreases costs and increases available low-income customer benefits. Another commenter provided an entirely different suggestion stating that income verification is a vestige of the community solar subscription model and is alternatively achieved by serving communities in low-income areas as measured by area or State median income census data. The commenter suggested that income verification through the Statewide Shared Clean Energy Facility (SCEF) program (which is a Connecticut program) relies on the distribution utilities determining customer eligibility.

After consideration of all of comments on the verification methods to qualify low-income households, the final regulations adopt these comments in part. The Treasury Department and the IRS considered numerous verification methods in crafting the Proposed Rules and the final regulations to strike a balance between reducing administrative burden for taxpayers and households and ensuring adequate checks that the facilities receiving a Capacity Limitation under Category 4 meet the requirements of section 48(e)(2)(C). The final regulations adopt the Proposed Rules' prohibition on self-attestations because they are not sufficiently reliable or verifiable. However, this prohibition on direct self-attestation from a household does not extend to categorical eligibility for needs-based Federal, State, Tribal, or

utility programs with income limits that rely on self-attestation for verification of income. The final regulations clarify that income verification is accepted via program verification where the relevant jurisdiction specifically accepts self-attestation.

The Treasury Department and the IRS agree that subscribers and applicants should not have to double verify when a State program accepts self-attestation. The final regulations, consistent with the Proposed Rules, provide flexibility for applicants to qualify households through several means, including categorical eligibility and paystubs, tax returns, or income verification through crediting agencies and commercial data sources. Moreover, the list of Federal programs included in footnote 5 of the Proposed Rules is not the exclusive list of Federal programs that could be used to demonstrate categorical eligibility, which provide additional flexibility to qualify households. However, in response to the comments, the final regulations will include additional examples of programs that will be considered categorically eligible based on income status. Therefore, in response to the commenter's request the following additional programs will be added to the illustrative list that was provided in the Proposed Rules: Federal Communication Commission's Lifeline Support for Affordable Communications, USDA's National School Lunch Program; U.S. Social Security Administration's Supplemental Security Income; or any verified government or non-profit program serving Asset Limited Income Constrained Employed (ALICE) persons or households. The final regulations also clarify that to qualify for categorical eligibility under one of these programs, an individual in the household must be currently enrolled or must have received an award letter or other written documentation from the program in the last 12 months.

With respect to State programs, the final regulations, consistent with the Proposed Rules, provide that categorical eligibility also consists of obtaining proof of household participation in a needs-based State or utility program, so long as the income limits are at or below the qualifying income level for the specific facility. The final regulations clarify that the qualifying income level for a household is based on where such

household is located. Without additional information or requirements, geographic-based eligibility verification does not prove that a particular household necessarily meets the income parameters of section 48(e)(2)(C). Although one commenter, for example, noted that LIHTC Qualified Census Tracts have stricter income requirements, this does not address the concern that a particular household's income may not qualify under the statute but only that there are households in the census tract that would qualify.

Two commenters requested eligibility of low-income households be established only at the time of enrollment and remain for the length of the subscription and that there should not be a continual obligation to verify households as low-income. This request is consistent with the Proposed Rules, which provided that applicants are responsible for proof-of-income verification and would be required to submit documentation once upon placing the qualified solar or wind facility in service that identifies each qualifying low-income household as well as other information. The final regulations maintain the Proposed Rule but clarify that the low-income status of a household is determined at the time the household is enrolled in the community program and does not need to be re-verified. Similarly, the recapture rules discussed in part XIII of this Summary of Comments and Explanation of Revisions section are not imposed if the low-income status of households change in later years; however, the Treasury Department and the IRS determined that a change in the final regulations to clarify this point is unnecessary.

VII. Annual Capacity Limitation

Under section 48(e)(4)(C), the total annual Capacity Limitation is 1.8 gigawatts (GW) of DC capacity for each of the calendar year 2023 and 2024 programs. Consistent with section 4.02 of Notice 2023–17, the Proposed Rules specified how the annual Capacity Limitation would be allocated across the four facility categories for 2023. The Proposed Rules, consistent with Notice 2023–17, reserved a portion of the total annual Capacity Limitation of 1.8 GW of DC capacity for each facility category for calendar year 2023 as follows:

Category 1: Located in a Low-Income Community	700 megawatts.
Category 2: Located on Indian land	200 megawatts.
Category 3: Qualified Low-Income Residential Building Project	200 megawatts.
Category 4: Qualified Low-Income Economic Benefit Project	700 megawatts.

The Proposed Rules also provided that the Treasury Department and the IRS would retain the discretion to reallocate Capacity Limitation across categories and sub-reservations to maximize allocation in the event one category or sub-reservation is oversubscribed and another has excess capacity.

One commenter suggested eliminating the 1.8 GW Capacity Limitation altogether, in favor of the same uncapped allocation that they view other solar customers, typically customers in a higher income bracket, have previously received. However, section 48(e)(4)(C) provides the 1.8 GW Capacity Limitation, and it cannot be modified by the final regulations. Therefore, the final regulations do not adopt this comment.

Another commenter suggested re-allocating the Capacity Limitation under Category 3 to Category 4 to increase the total number of MW that can be deployed efficiently while yielding the highest economic benefit. Similarly, a different commenter recommended increasing Category 4 by combining Category 1 and 4 into a single 1.4 GW category applicable to both. In addition, this commenter suggested that the Treasury Department and the IRS should layer on preferences for economic benefits over location in facility selection, similar to its preferences around ownership and location (discussed in part VII of this Summary of Comments and Explanation of Revisions section). Procedurally, an applicant would submit an application for this combined category in the applicable sub-allocation and indicate under which category qualification, and thus bonus level, for the project is sought. The commenter added that the Treasury Department and the IRS can apply a similar approach to the Proposed Rules to sub-allocate capacity among facility types within that combined category, subdividing among commercial, community, and single-family residential solar as strongly recommended by both industry and environmental justice groups since last year. Another commenter also had recommendations about how to re-allocate capacity taking into account the Additional Selection Criteria (ASC). The commenter suggested that the Treasury Department and the IRS reallocate unused capacity in the same year. Specifically, the commenter suggested that if there is unused capacity from a category or an ASC reservation that it be allocated in the same year to ensure all 1.8 GW of projects can be efficiently deployed annually. The commenter encouraged the Treasury Department

and the IRS to consider implementing subcategory capacity carveouts within each category to effectively allow for a rolling application system. For example, in Category 4, there should be more capacity dedicated to certain projects over others. Two commenters expressed disagreement for the large total reservation in Category 1. These commenters suggested that some of the Category 1 reservation should be moved to Category 4.

After consideration of these comments, the final regulations, consistent with the Proposed Rules, provide that the total Capacity Limitation for each Program year will be divided across the 4 facility categories and that the Treasury Department and the IRS retain the discretion to reallocate Capacity Limitation across categories and sub-reservations to maximize allocation in the event one category or sub-reservation is oversubscribed and another has excess capacity. The Treasury Department and the IRS continue to believe that the reservations based on facility category best allow a wide variety of facilities and benefits to go to low-income communities to further the intent of the statute. Absent category reservations, all the annual Capacity Limitation could get allocated to one facility category, which is contrary to the statute providing four distinct categories.

The final regulations clarify that the specific reservations for a Program year are provided in guidance published in the Internal Revenue Bulletin. For Program year 2023, Notice 2023–17 and Revenue Procedure 2023–27 provide the specific reservation amounts for each category. As clarified in the final regulations, the specific reservation amounts are established based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category consistent with statutory intent.

One commenter stated that sub-allocations should be adaptable in future Program years to account for lessons learned. However, the commenter said that the 200 MW for Indian land should not be reallocated to other categories even if not fully claimed by applications in any given year, nor should any shortfall of applications be used to justify smaller future allocations. The Treasury Department and the IRS understand the importance of all of the categories provided by Congress in the statute and agree that the Capacity Limitation allocated to each facility category

should be adaptable. Accordingly, the Treasury Department and the IRS have retained discretion to reallocate Capacity Limitation and to revise amounts reserved for each category in each Program year. After the 2023 Program year, the Treasury Department and the IRS will determine whether to change the facility category reservation amounts for the 2024 Program year based on the factors provided in the final regulations and will announce the specific reservation amounts in Program guidance applicable to 2024.

VIII. Additional Selection Criteria

The Proposed Rules provided that facilities that meet at least one of the two categories of Ownership and Geographic Criteria, collectively the ASC, would receive priority for an allocation within each facility category described in section 48(e)(2)(A)(iii). The Proposed Rules also provided that at least 50 percent of the total Capacity Limitation in each facility category would be reserved for facilities meeting ASC.

The Proposed Rules provided that in evaluating applications received during the initial application window, priority would be given to eligible applications for facilities meeting at least one of the two ASC. If the eligible applications for Capacity Limitation for facilities that meet at least one of the two ASC criteria exceed the Capacity Limitation for a category, facilities meeting both ASC criteria would be prioritized for an allocation.

Several commenters expressed overall agreement and support for the inclusion of ASC, and the purpose behind these criteria, which commenters feel will promote community ownership. One commenter expressed disagreement with the use of ASC in the Program or that it should not be used for the 2023 Program. Another commenter echoed this by saying that the Treasury Department and the IRS should first assess the Program and applications received for 2023, and then consider including the ASC and a corresponding capacity reserve amount.

Other commenters suggested that if ASC is used, the percentage of the total Capacity Limitation in each facility category for ASC should be reduced from 50 percent to 25 percent or to 10 percent. Another commenter stated that the Ownership Criteria is too restrictive, and few applicants will be able to meet the high standard. This commenter recommended giving preferential allocation of capacity limitation to groups that meet one or both of the ASC, without reserving 50 percent of the capacity under each category on a

rolling basis. One commenter similarly stated that an inflexible reservation of 50 percent of the total Capacity Limitation in each category for facilities meeting ASC may result in potentially hundreds of MW of unclaimed Capacity Limitation for 2023. This commenter suggested that a smaller amount of reservation should be reserved for ASC projects in 2023, and that the amount of reservation should be increased in future years. A few other commenters, similarly, suggested that in the first year of the Program, ten percent of the capacity in each sub-reservation should be reserved for ASC applicants, with the Treasury Department and the IRS retaining authority to reallocate the capacity and expand the capacity reservations in future Program years.

One commenter separately stated that except for reallocations (meaning reallocations of capacity between categories) for facilities meeting the ASC, the Treasury Department and the IRS should ensure that proposed reallocations more than 50 MW are subject to public notice and comment.

A few commenters who supported reduction of the ASC reservation amounts, stated that it will take significant time and coordinated effort for new community solar markets to emerge where efforts to establish Program frameworks have been lacking to date. These commenters stated that it is likely that there will be few applicants who meet the ASC, or that the projects developed by owners that would qualify tend to be small scale projects. Some commenters also asserted that the restrictive Ownership Criteria would likely encourage gaming.

In contrast, some commenters expressed support for at least 50 percent of the total Capacity Limitation being reserved for facilities meeting ASC. Additionally, one of the commenters supporting the reduction in the ASC reservation amounts stated that the Treasury Department and the IRS should prioritize reallocations to facility categories with more than 25 percent of the facilities meeting the ASC.

One commenter suggested that a third set of “Market-based” criteria should be added to ASC. The commenter stated that these criteria would prioritize projects that maximize the benefit delivered to the largest number of low-income customers. The two criteria provided by the commenter under this category are: 1. Proposed discount rate: Savings delivered to low-income customers; and 2. Percentage of project reserved for low-income customers: The percentage of the output capacity that will service low-income customers. However, the commenter only includes

community solar projects in discussing the reason for this proposal. Two other commenters also proposed a third set of criteria focused on prioritizing projects that are participating in State low-income renewable energy programs, with one commenter specifically naming programs funded under the Environmental Protection Agency’s (EPA) Greenhouse Gas Reduction Fund Solar For All Program. However, one of the comments specifically limits these criteria to Category 1 projects. Neither of the comments explain how these criteria would be equitably applied to facilities applying from all States, especially States that do not have such programs, nor do the commenters explain how wind facilities would be eligible under the previously recommended criteria. Other commenters provided additional criteria that could be considered including the use of minority and woman-owned businesses as contractors and employment of workers from low-income communities. Finally, a group of commenters suggested that the Treasury Department and the IRS consider applicants under ASC if the applicant signs a binding commitment to provide financial benefits for longer than the statute requires; or if the applicant sign a binding commitment promising to provide greater financial benefits than required. Another commenter, similarly, suggested incorporating a new category of ASC based on whether the project provides benefits to the local community and its members. The commenter suggested that this would better ensure that Category 1 and Category 2 projects are providing direct benefits to households or the local community. This comment gives examples of criteria for this “provision of benefits” category including: targeted hiring provisions, local procurement standards for Minority, Women and Disadvantaged owned Business Enterprises, Community Workforce Agreements, and Community Benefit Agreements; provision of direct financial benefits to community members, such as energy bill savings or reduction of energy burden; and for Category 1 projects, actual low-income status of households who would be benefited.

After consideration of these comments, the final regulations, consistent with the Proposed Rules, maintain that at least 50 percent of the total Capacity Limitation be reserved for facilities meeting ASC to help achieve the Treasury Department and the IRS’s stated goals of the Program in Notice 2023–17 to (1) increase adoption of and access to renewable energy facilities in

low-income communities and communities with environmental justice concerns; (2) encourage new market participants in the clean energy economy; and (3) provide social and economic benefits to people and communities that have been marginalized from economic opportunities and overburdened by environmental impacts. While many of the comments provide suggestions for alternative or additional ASC, many of the suggestions could not be applied to all categories or applied nation-wide such as the use of enrollment in a specific State energy program. Other suggestions are infeasible due to statutory conflict such as providing benefits for a longer duration than the statute requires. Lastly, the Treasury Department and the IRS are anticipating upwards of 100,000 applications annually for the Program. Selection criteria that is qualitative, subjective, and would require significant review such as a Community Benefits Agreement, Workforce Agreement, or procurement or hiring targets are administratively infeasible to have timely decisions made throughout the year. The Treasury Department and the IRS heard from many stakeholders that timely decisions will be key to Program success. The ASC proposed by the Treasury Department and the IRS are also directly connected to the applicant (ownership) or the facility (geography), which allows objective criteria. The Treasury Department and the IRS may consider other ASC in future guidance that help achieve these goals and are administratively feasible for the Program. However, the Treasury Department and the IRS did not adopt the commenters’ suggestions to add other ASC at this time because the Treasury Department and the IRS determined the ASC provided in the Proposed Rules best promote the Program goals discussed earlier and should be the focus of the Program.

The final regulations maintain that at least 50 percent of the Capacity Limitation in each facility category will be reserved for facilities meeting the ASC but clarify that the method for utilizing the ASC and the specific amount of the reservation (at or above 50 percent) will be provided in guidance published in the Internal Revenue Bulletin. For program year 2023, those procedures are provided in Revenue Procedure 2023–27. The final regulations clarify that the total Capacity Limitation in each facility category reserved for qualified facilities meeting the ASC may be reevaluated in future guidance provided at least 50

percent is reserved. The final regulations also clarify that after the reservation for qualified facilities meeting the ASC is established in guidance, it may later be re-allocated across facility categories and sub-reservations in the event one category or sub-reservation within a category is oversubscribed and another has excess capacity.

One commenter stated that most, if not all, categories, will be oversubscribed, and acknowledged that there will need to be a selection process other than a first-come, first-served application process. However, this commenter recommended against using the proposed Ownership and Geographic Criteria as a means for prioritizing applications. This commenter asserted that criteria related to the ownership or location of a project provides no indication of project viability. This commenter stated that instead, applicants should be prioritized based on project maturity, providing a list of factors that are already included in the Proposed Rules for the Program, for some or all categories, such as site control and possession of all non-ministerial permits. The commenter suggested that a lottery be used in oversubscribed categories for projects that meet the commenters stated project maturity factors. A few other commenters requested that applicants who have made meaningful financial investments in relatively mature projects should be shown preference for an allocation. Specifically, this group of commenters suggested that the Treasury Department and the IRS, in addition to the Ownership and Geographic Criteria, prioritize projects that have signed agreements with income-qualified customers representing 10 percent of a project's capacity.

After consideration by the Treasury Department and the IRS, these comments are not adopted. The project maturity selection criteria that these commenters suggest are already part of the minimum Program requirements to apply that were provided in the Proposed Rules. ASC are selection factors for prioritizing projects in addition to the already required minimum project maturity level that this commenter requests. Prioritizing signed agreements with customers would not work for all categories, and applicants in Category 4

A. Ownership Criteria

The Proposed Rules provided that the Ownership Criteria category is based on characteristics of the applicant that owns the qualified solar or wind facility. A qualified solar or wind

facility will meet the Ownership Criteria if it is owned by a Tribal enterprise, an Alaska Native Corporation, a renewable energy cooperative, a qualified renewable energy company meeting certain characteristics, or a qualified tax-exempt entity. If an applicant wholly owns an entity that is the owner of a qualified solar or wind facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), the applicant, and not the disregarded entity, is treated as the owner of the qualified solar or wind facility for purposes of the Ownership Criteria.

The Proposed Rules provided that a Tribal enterprise, for purposes of the Ownership Criteria, (1) is an entity that is owned at least 51 percent, either directly or indirectly (through a wholly owned corporation created under its Tribal laws or through a section 3 or section 17 Corporation),⁶ by an Indian Tribal government (as defined in section 30D(g)(9) of the Code), and (2) the Indian Tribal government has the power to appoint and remove a majority (more than 50 percent) of the individuals serving on the entity's board of directors or equivalent governing board.

The Proposed Rules provided that an Alaska Native Corporation, for purposes of the Ownership Criteria, is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

The Proposed Rules provided that a Renewable Energy Cooperative, for purposes of the Ownership Criteria, is an entity that develops qualified solar and/or wind facilities and owns at least 51 percent of a facility and is either (1) a consumer or purchasing cooperative controlled by its members who are low-income households (as defined in section 48(e)(2)(C)) with each member having an equal voting right, or (2) a worker cooperative controlled by its worker-members with each member having an equal voting right.

The Proposed Rules provided that a Qualified Renewable Energy Company (QREC), for purposes of the Ownership Criteria, is an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. In addition to its general business purpose, the Proposed Rules noted that the Treasury Department and the IRS were considering the following requirements and specifically requested comments on

these potential requirements that a QREC would need to satisfy:

(1) At least 51 percent of the entity's equity interests are owned and controlled by (a) one or more individuals, (b) a Community Development Corporation (as defined in 13 CFR 124.3), (c) an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), (d) an Indian Tribal government (as defined in section 30D(g)(9)), (e) an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)), or (f) a Native Hawaiian organization (as defined in 13 CFR 124.3);

(2) After applying the controlled group rules under section 52(a) of the Code, the entity has less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than \$5 million in annual gross receipts in the previous calendar year;

(3) The entity first installed or operated a qualified solar or wind facility as defined in section 48(e)(2)(A) two or more years prior to the date of application; and

(4) The entity has installed and/or operated qualified solar or wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more Low-Income Communities as defined in section 48(e)(2)(A)(iii)(I).

The Proposed Rules provided that a "qualified tax-exempt entity", for purposes of the Ownership Criteria, is (1) An organization exempt from the tax imposed by subtitle A of the Code by reason of being described in section 501(c)(3) or section 501(d); (2) Any State, the District of Columbia, or political subdivision thereof, any territory of the United States, or any agency or instrumentality of any of the foregoing; (3) An Indian Tribal government (as defined in section 30D(g)(9)), political subdivision thereof, or any agency or instrumentality of any of the foregoing; or (4) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

The final regulations modify the definition of "qualified tax-exempt entity" by striking "any territory of the United States." The Treasury Department and the IRS made this change to correct a drafting error. The tax rules in section 50(b) related to investment tax credits (ITCs), such as section 48, generally provide that credit-eligible property cannot be used predominantly outside the United States

⁶ A "section 17 corporation" is a corporation incorporated under the authority of section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124. A "section 3 corporation" is a corporation that is incorporated under the authority of section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203.

(the fifty States and the District of Columbia) unless the property is owned by a U.S. corporation or U.S. citizen (other than a citizen entitled to the benefits of section 931 (Guam, American Samoa, or the Northern Mariana Islands) or section 933 (Puerto Rico)). Therefore, property used in the territories and owned by a territory government, or an entity created in or organized under the laws of a U.S. territory, generally would not qualify for a section 48 credit.

Another commenter stated that the Ownership Criteria should be eliminated because Congress indicated no intent in the IRA to prefer applications for the Program on project ownership. This commenter asserts that the Ownership Criteria results in non-profits organizations receiving outright allocation awards, while qualified business taxpayers will be subject to a lottery system for any remaining credit. Similarly, another commenter stated that the ASC and the reservations for ASC are not grounded in the statute. Although Congress did not include Ownership Criteria directly in the statute, it did direct the Treasury Department to create a Program to allocate the annual Capacity Limitation of 1.8 GW as measured in DC. As discussed earlier, the Treasury Department and the IRS stated three goals for the Program: (1) increase the adoption of and access to renewable energy facilities in low-income communities and communities with environmental justice concerns; (2) encourage new market participants in the clean energy economy; and (3) provide social and economic benefits to people and communities that have been marginalized from economic opportunities and overburdened by environmental impacts. Based on the breadth of research around the barriers to adoption of renewable energy technology by low-income communities and to meet statutory objectives and Program goals, the inclusion of Ownership Criteria will allow the participation of institutions that are well positioned to increase adoption of clean energy in low-income communities and by low-income households. Moreover, all applicants, with limited exception, in a given category and sub-category, are generally required to meet the same requirements to be awarded an allocation amount based on the projected net output of the facility. No applicant is being awarded the actual bonus credit amount during the application and selection period. All facility owner-applicants who are awarded an allocation will then have to place the facility in service and meet

certain requirements before the owner can claim the section 48(e) Increase for the section 48 credit.

A few commenters stated that it is not appropriate to apply the ASC to Category 3 facilities. One commenter said that multi-family affordable housing guarantees that the benefits in Category 3 will be provided to low-income households. Another commenter claimed that Category 3 facilities are subject to existing rules that conflict with the ASC.

Several commenters stated that the current Ownership Criteria may conflict with ownership structures typically used for LIHTC projects. One commenter expressed concern that a tax-exempt applicant who is an owner of a facility through a partnership structured as a limited liability company or a limited partnership for State law purposes would not be considered a qualified tax-exempt entity because the tax-exempt applicant is not the sole owner. This commenter requested revision of the Ownership Criteria to ensure that tax-exempt entities (and other prioritized owner types) remain eligible if the entity controls the managing member or general partner of the partnership that owns the facility for Federal income tax purposes. Another commenter suggested that additional language should state that a qualified tax-exempt entity would still meet the Ownership Criteria if the tax-exempt entity directly serves as the managing member or general partner of the partnership that owns the facility for Federal income tax purposes. A few commenters also stated that most tax-exempt entities entering into a renewable energy tax credit transaction related to a LIHTC project will enter into a partnership with a tax equity investor where the tax-exempt entity is a general partner or managing member and has control over the partnership's operations, but is not the majority owner. The tax equity investor is usually the majority owner to allow the investor to claim most of the tax credits generated by the project.

The Treasury Department and the IRS understand that for tax credit monetization purposes, LIHTC projects and solar and wind facilities are often financed using tax equity partnership structures where a tax-exempt entity (or other Ownership Criteria entities) owns a minority interest (either directly or indirectly) in an entity treated as a partnership for Federal income tax purposes that owns the project or facility. In response to these comments, the Treasury Department and the IRS have clarified through additional language in the final regulations that a

qualified solar or wind facility owned by an entity treated as a partnership for Federal income tax purposes is eligible for ASC consideration if an entity that meets the Ownership Criteria has at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of the partnership and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership. Because indirect ownership is permissible, this means an entity that meets the Ownership Criteria can hold its partnership interest through a taxable subsidiary. This clarification should allow tax partnerships formed for the purpose of monetizing LIHTCs or section 48 credits that are directly or indirectly owned and managed by an entity that satisfies the Ownership Criteria to meet the ASC and thus better reflect potential applicants and financing structures for all Categories. The final regulations also clarify that a facility that has received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria will not be disqualified and lose its allocation if it is transferred by the original applicant to a tax partnership, prior to being placed in service, in which the original applicant retains the requisite direct or indirect ownership of the tax partnership and is a managing member or general partner (or similar title) under State law of such partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

One commenter specifically noted that some Tribal enterprises do not have a "board of directors or equivalent governing board," but the corresponding Tribes own utilities and have the power to appoint and remove the utility's leadership. Therefore, the commenter asked that the Treasury Department and the IRS to clarify Tribally owned utilities (or those Tribally owned entities that do not have a "board," such as an LLC) meet the Ownership Criteria set forth in the Program. The commenter also stated that "Ownership" should stem from a Tribe's sovereign decision to construct a project rather than how a managing entity is structured and stated that Tribes should be able to attest to ownership control without further documentation. Several commenters included a similar statement. Another commenter further requested that the Tribe be considered the applicant and

not the LLC, but that the LLC should also be allowed to apply, if it is a disregarded entity, and wholly owned by the Tribe (or Tribal enterprise).

In response to these comments, the Treasury Department and the IRS have modified the definition of Tribal enterprise in the final regulations by providing that a Tribal enterprise for purposes of the Ownership Criteria is an entity that (1) an Indian Tribal government (as defined in section 30D(g)(9) of the Code) owns at least a 51 percent interest in, either directly or indirectly (through a wholly owned corporation created under its Tribal laws or through a section 3 or section 17 Corporation), and (2) is subject to Tribal government rules, regulations, and or codes that regulate the operations of the entity.

Several commenters requested revisions to the definition of QREC. One commenter requested that QREC be further defined but did not provide specific language to further define the term. Additionally, a few commenters recommended that the Treasury Department and the IRS change the “and” at the end of the list of requirements that a QREC must satisfy to “or” so that the applicant only needs to meet one requirement, inclusive of the general business purpose to serve low-income communities. One commenter added that this would be more inclusive for new market entrants. Another commenter requested that the criteria for QREC be modified to include trusts as individuals, and that the requirement that 51 percent of the equity interest be controlled by an individual be reduced to 45 percent or, alternatively, at least 25 percent employee owned, and that the second requirement be expanded to provide that the company must have less than 100 full time employees and less than \$30 million in annual gross receipts from the previous calendar year. The same commenter also suggested that the definition of a QREC be expanded to include public benefit corporations. One commenter suggested that Category 1(a) of the QREC definition, which currently reads as “one or more individuals,” should be replaced with “renewable energy cooperative,” claiming that this keeps the consistency of the definition with the previous section and requires more rigorous working agreements.

A few commenters variously commented on employee requirements for QRECs. Two commenters, also commenting on the gross receipts threshold, suggested that a QREC maintain less than 10 full time employees and less than \$30.4 million in annual gross receipts from the

previous calendar year. Another commenter stated that requiring a QREC to have fewer than ten full-time equivalent employees is excessively restrictive and unrealistic. This commenter also stated that the less than \$5 million threshold for annual gross receipts in the previous calendar year may be unrealistically low. One commenter stated that the small size requirement appears to be arbitrary and suggested that the Treasury Department and the IRS use the Small Business Administration (SBA) small business size and revenue requirement to promote small business entrants. Further, another commenter stated that imposing an additional requirement to employ workers in certain low-income communities would be too onerous. Additionally, one commenter stated that it is unclear whether the requirement to employ low-income persons would be applicable at the time of application or through the life of the project. This commenter requested that the Treasury Department and the IRS clarify that this requirement is applicable at the time of application, and then consider allowing State or Federally approved workforce training programs, supported through the project, as a means of qualification. However, another commenter, who generally opposed the inclusion of QRECs as an ASC Ownership Criteria category, requested that the Treasury Department and the IRS require such companies to enter into Community Workforce Agreements to ensure workers within low-income and disadvantaged communities benefit from the wealth building opportunities provided by the Program. This commenter also provided a list of the community benefits that should be incorporated into the commenter's suggested agreements.

Additionally, one commenter stated that new market entrants are altogether barred from meeting this definition. Overall, the same commenter suggested as modification adding other consumer protection measures, minority- or women-owned business enterprise criteria, individual rather than company-based experience thresholds, and providing flexibility with regard to size, so as to enable more local clean energy business growth. A separate commenter also noted that new entrant companies, that would otherwise meet the QREC definition, will not qualify due to the specific experience requirement. Another commenter requested the Treasury Department and the IRS update the definition of QREC to include qualified rooftop lessors. This commenter provided an example of

projects installed by small businesses that otherwise meet the definition but are counterparties to a lease provided by a third-party project developer. This commenter said that many single-family residential rooftop facilities use third-party ownership (TPO) models to meet the requirements of section 48 but claims that in many States legal title to such facilities is not possible for entities meeting the definition of a QREC, which, by virtue of their small size, do not have access to a lease fund. One commenter also noted that many new market entrants have prior experience as part of other solar projects that they do not own and suggested that companies that have been subcontractors be included for criteria (3) and (4), and that the scope be broadened to be “any solar provider.” A Tribal comment letter also stated that the definition of a QREC is too limited and does not support newly formed entities that are owned in part by Tribes. This commenter claims that, prior to the IRA, Tribes were not able to create joint ventures to deploy solar or wind projects.

After consideration of all comments on the definition of QREC, the final regulations adopt some changes and do not adopt others. The Treasury Department and the IRS will maintain the inclusion of QREC in the final regulations. However, to provide increased flexibility and to encourage new market participants, the Treasury Department and the IRS have modified the QREC definition to allow for previous participation in a renewable energy project as a service provider (either as an individual or a company) to demonstrate a track record for serving low-income communities. While some commenters stated that brand new entities may not meet the criteria for QREC, the Treasury Department and the IRS developed the QREC criteria to support companies or entrepreneurs with a commitment and track record of serving low-income communities that have not been able to grow their market share. The Treasury Department and the IRS also increased the annual gross receipts threshold based on the comments and additional market research to allow for flexibility to growing companies that may still not have significant market-share. After careful assessment of all the proposals provided in the comments and current market information, the final regulations provide additional flexibility to new market entrants by modifying the requirements that a QREC would need to satisfy:

(1) At least 51 percent of the entity's equity interests are owned and controlled by (a) one or more

individuals, (b) a Community Development Corporation (as defined in 13 CFR 124.3), (c) an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A) of the Code), (d) an Indian Tribal government (as defined in section 30D(g)(9)), (e) an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)), or (f) a Native Hawaiian organization (as defined in 13 CFR 124.3);

(2) Has less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4) of the Code) and less than \$20 million in annual gross receipts in the previous calendar year;

(3) First installed or operated a qualified solar and/or facility as defined in section 48(e)(2)(A) two or more years prior to the date of application; or

(4) Has provided solar services as a contractor or subcontractor to qualified solar or wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more Low-Income Communities as defined in section 48(e)(2)(A)(iii)(I).

The Treasury Department and the IRS may consider other changes to the definition of a QREC in future guidance based on updated market information and what is administratively feasible for the Program.

Another commenter suggested that the definition of QREC be revised to provide that the 51 percent ownership requirement applies as an average over the life of the project because of tax credit equity partnerships that may change facility ownership for a period of time.

In response to these comments, the Treasury Department and the IRS have clarified through additional language in the final regulations that a partnership for Federal income tax purposes is eligible for ASC consideration so long as an entity that meets the Ownership Criteria has at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of the partnership that owns the qualified solar or wind facility and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership. Therefore, there is no need to revise the 51 percent ownership requirement as it applies as an average over the life of the project as the commenter suggests. This also allows more flexibility for all applicants that

meet the Ownership Criteria to enter financing arrangements such as tax equity partnerships.

This commenter also suggested that the definition of Renewable Energy Cooperatives be revised to require not only that each member have an equal voting right, but also that each member have rights to profit distributions based on patronage as defined by the proportion of either (i) volume of energy or energy credits purchased (kWh), (ii) volume of financial benefits delivered (\$), or (iii) volume of financial payments made (\$), and in which at least 50 percent of the patronage in the qualified project is by cooperative members who are low-income households. The commenter noted that the second requested change clarifies that the Renewable Energy Cooperative as a whole does not need to be made up solely of low-income households, but only that for qualified projects that are seeking the Low-Income Bonus Credit, over 50 percent of the participating member interests (and corresponding member benefits) must accrue to households that qualify as low-income (as defined in section 48(e)(2)(C)).

One commenter stated, regarding Renewable Energy Cooperatives, that it may be difficult for cooperatives to ensure income verification of their members, and suggested adding eligibility pathways, potentially based on geography or charter documents, that retain an equity and justice focus while allowing greater flexibility.

Based on these comments, the Treasury Department and the IRS have modified the definition of Qualified Renewable Energy Cooperative in the final regulations to account for different energy cooperative models where profits could be distributed to members based on volume of energy, volume of financial benefits delivered, or volume of financial payments made. The modified language states that a Qualified Renewable Energy Cooperative is an entity that develops qualified solar and/or wind facilities and is either (1) a consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by the proportion of either (i) volume of energy or energy credits purchased (kWh), (ii) volume of financial benefits delivered (\$), or (iii) volume of financial payments made (\$), and in which at least 50 percent of the patronage in the qualified project is by cooperative members who are low-income households (as defined in section 48(e)(2)(C)) or (2) a worker

cooperative controlled by its worker-members with each member having an equal voting right.

One commenter expressed that qualified tax-exempt entity should not include all section 501(c)(3) entities without additional guardrails. This commenter further suggests that if QRECs are required to submit documentation of "general business purpose," then section 501(c)(3) organizations applying as a qualified tax-exempt entity should be required to provide minimal documentation showing relevant charitable purposes. This commenter additionally requested clarification about the manner of application for tax-exempt entities in Puerto Rico and other territories. Similarly, one commenter noted that many large corporations have section 501(c)(3) organizations that could deploy renewable energy projects without tax credits but will be eligible under the definition in the Proposed Rules. This commenter proposed adding to the definition the following requirements: annual gross receipts of no more than \$30.4 million (consistent with recommendations for QRECs); prior experience owning, operating, or consulting on a renewable energy project; and an organizational mission statement and/or values that show alignment with the Program.

One commenter requested more clarity on how Tribal enterprises, as well as Tribal governments, political sub-divisions, and agencies or instrumentalities thereof under the qualified tax-exempt entity definition and Tribally owned QRECs can satisfy the Ownership Criteria.

The Treasury Department and the IRS have not adopted any changes in the final regulations regarding qualified tax-exempt entities. The addition of guardrails such as requiring a particular business or charitable purpose is infeasible. All tax-exempt organizations that qualify for ASC will need to demonstrate a charitable purpose through their tax-exempt designation. The Treasury Department and the IRS anticipate that a wide variety of qualified tax-exempt entities may participate in the Program that may include community-based organizations, educational institutions of all sizes, and State and local governments, among others. Accordingly, there is no one business or charitable purpose for qualified tax-exempt entities that would apply to the range of entities that support meeting the stated goals of the Program. The Treasury Department and the IRS may consider changes in future guidance based on updated market information

and what is administratively feasible for the Program. The Treasury Department and the IRS are also providing clarity through modifications in the definition of Tribal enterprise, and the circumstances in which Tribal governments, political sub-divisions, and agencies or instrumentalities thereof would meet the criteria of the qualified tax-exempt entity definition and other Ownership Criteria based on a variety of comments provided by Tribes.

B. Geographic Criteria

The Proposed Rules provided that the Geographic Criteria category is based on where the facility will be placed in service. To meet the Geographic Criteria, a facility would need to be located in a PPC⁷ or in a census tract that is designated in the CEJST as disadvantaged based on whether the tract is either (a) greater than or equal to the 90th percentile for energy burden and is greater than or equal to the 65th percentile for low income, or (b) greater than or equal to the 90th percentile for PM_{2.5} exposure and is greater than or equal to the 65th percentile for low income.⁸ The Proposed Rules provided that applicants who meet the Geographic Criteria at the time of application are considered to continue to meet the Geographic Criteria for the duration of the recapture period, unless the location of the facility changes.

The Proposed Rules defined a PPC generally as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For the purposes of the Program, the Proposed Rules provided that the PPC measure adopted by the USDA should be used to make this determination. The most recent measure, which would apply for the 2023 Program year, incorporates poverty estimates from the 1980, 1990, 2000 censuses, and 2007–11 ACS 5-year average.

Generally, commenters were supportive of the Geographic Criteria, including several commenters who had

concerns with Ownership Criteria. However, one commenter stated that the Geographic Criteria conflict with existing Federal housing policy because it would encourage facilities to be built in connection with housing in certain areas, rather than supporting low-income residents no matter where they live. Another commenter stated that the Geographic Criteria is imprecise because it does not take into account disadvantaged communities in certain areas, especially those that are highly disadvantaged but border affluent communities.

Several commenters on behalf of Tribes stated that Geographic Criteria should not be applied to Category 2 Projects. However, a few Tribal commenters asked that the Treasury Department and the IRS retain Geographic Criteria for Category 3 and Category 4 projects that are located on Indian land so that Tribal projects can better compete. In response to these comments, the Treasury Department and the IRS have decided to not include Geographic Criteria as an ASC for Category 2 but maintain the use of Geographic Criteria as an ASC as stated in the Proposed Rules in all other categories.

Another commenter provided several suggestions for revising the Geographic Criteria, stating that the Treasury Department and the IRS should consider broadening the Geographic Criteria by including all Indian land or not applying additional Geographic Criteria to them; adding LIHTC and New Markets Tax Credit designations; applying all or at least more of CEJST's burden thresholds as well as the Environmental Protection Agency's EJScreen's thresholds; allowing State screening tools and maps; providing for community self-nomination; or perhaps including adjacent tracts.

Another commenter, providing a comment on Category 3 projects, generally supported the use of Geographic Criteria to prioritize allocations, but recommended reconsideration of the use of the PPCs as a poverty measure. This commenter stated that the PPCs provide data at a county-level designation and that this masks significant variation within counties and does not capture persistent poverty within counties not registering as PPCs. This commenter instead recommended that the LIHTC Qualified Census Tract geographic definition be utilized as an option to determine whether a project meets the Geographic Criteria, stating that the QCT designation denotes census tracts where either (1) 50 percent or more of the households have an income less than 60

percent of the Area Median Gross Income, or (2) the poverty rate is over 25 percent. One Tribal commenter recommended that the Treasury Department and the IRS use a geographic determination based on the LIHTC, or the NMTC because Tribes have been using these to build new Tribal housing or invest in clean energy. Additionally, another commenter suggested that the Geographic Criteria should be expanded to include: disadvantaged communities in other burdened categories; a process for communities to be recognized as communities with environmental justice concerns based on State environmental justice screening tools; and a self-nomination process for communities to submit additional information to demonstrate that they are communities with environmental justice concerns that may not be captured by CEJST or other screening tools. This commenter additionally requested the provision of a publicly accessible mapping tool to identify the areas that meet the geographic criteria.

After consideration of these comments, the Treasury Department and the IRS have not adopted the suggestions. The intent of the Geographic Criteria as applied to Category 3 and to other categories is to encourage the construction of energy facilities in areas across the country that have high energy costs and that might otherwise suffer from underinvestment. This includes areas of the country where affordable housing currently exists but where the adoption of renewable energy technology may be challenging. The Treasury Department and the IRS have determined ASC based on their applicability across all categories. While LIHTC Qualified Census Tract as a Geographic criteria may meet some goals of the program, it is a methodology that is used primarily in the LIHTC industry and not widely known or used by other housing programs or in energy programs. Therefore, its inclusion as a Geographic Criteria is not adopted. Additionally, an allocation based on Geographic Criteria in Category 3 for a facility built in connection with an existing Federally subsidized housing building does not impact the Federal housing policy with regards to siting of the housing itself. The Treasury Department and the IRS may consider other metrics for Geographic Criteria in future guidance that help achieve the Program goals and are administratively feasible for the Program. A publicly accessible mapping tool will be available on DOE's Program website.

⁷ <https://www.ers.usda.gov/data-products/poverty-area-measures/>.

⁸ <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>. The CEJST website provides further detail on the terms used in identifying census tracts for the Energy category. "Energy cost" is defined as "Average household annual energy cost in dollars divided by the average household income." PM_{2.5} is defined as "Fine inhalable particles with 2.5 or smaller micrometer diameters. The percentile is the weight of the particles per cubic meter." "Low income" is defined as "Percent of a census tract's population in households where household income is at or below 200% of the Federal poverty level, not including students enrolled in higher education." See Methodology & data—Climate & Economic Justice Screening Tool ([geoplatform.gov](https://screeningtool.geoplatform.gov)).

IX. Sub-Reservation of Allocation for Facilities Located in a Low-Income Community

The Proposed Rules provided that the 700 MW Capacity Limitation reservation for facilities seeking a Category 1 allocation would be sub-divided with 560 MW reserved specifically for eligible residential BTM facilities, including rooftop solar. The Proposed Rules provided that the remaining 140 MW of Capacity Limitation would be available for applicants with FTM facilities as well as non-residential BTM facilities.

Several commenters opposed to the reservation of capacity in Category 1 for BTM residential facilities. Generally, these commenters requested that the 560 MW capacity reserved for BTM residential facilities be eliminated (leaving a general 700 MW reservation) or that the amounts should be revised. The main concern of commenters is that the proposed 140 MW will provide very limited eligibility for FTM projects, including community solar projects that would otherwise qualify under the statute. One commenter strongly recommended against subdividing the Category 1 Capacity Limitation into BTM and FTM MW blocks. This commenter stated that a BTM project typically requires a credit review and/or a long-term financial commitment from the customer, which the commenter believes is antithetical to the objective of a Program intended to ease financial burdens on low-income households, not impose them. The commenter suggested to instead require that a certain percentage of all generating facilities' capacity be allocated to low-income, residential subscribers. Another commenter pointed out that location is the only requirement in Category 1 under the statute, and that the focus on BTM residential facilities does not fit with the statute.

Other commenters have noted that this focus on BTM residential facilities limits the potential of other applicants to benefit from Category 1. For example, at least two commenters have noted that the prioritization of residential facilities limits the potential for non-profit organizations and municipalities from obtaining an allocation for facilities built to power schools, libraries, food pantries, shelters, houses of worship, education facilities, local community-based non-profits, assisted living facilities, performing arts centers, and community development corporations. One of these commenters explains that these organizations play crucial roles in their communities, providing necessary services and support to the residents of

the surrounding area, and the sub-reservation overlooks the fact that commercial and industrial scale solar benefits may be more impactful. In arguing against the sub-reservation, another commenter noted the belief that Category 1 should be reserved specifically for facilities that are "Located in a Low-Income Community," which directly benefit the residents of that community. As an alternative, the commenter asks that non-profits, public facilities, and municipalities be included in the larger sub-reservation. Another commenter, in its suggestion to revisit this sub-reservation, stated their view that community facilities represent the "highest and best use" of the 10 percent low-income adder from the standpoint of ensuring meaningful community benefit. Similarly, another commenter stated that the reservation of 560 MW exclusively for residential BTM ignores the fact that most agrivoltaic and agribusiness BTM projects that benefit farmers (and thus consumers) would also benefit from Category 1. This commenter states that the benefit of using renewable energy solar and storage is an emerging renewable agribusiness industry that would benefit America significantly by lowering energy input costs and lowering food prices for the nation by extension.

One commenter suggested to amend the requirements from focusing on FTM versus BTM to instead distinguish "on-site usage of credits" from "off-site usage of credits" to more accurately prioritize residential projects. Similarly, another commenter had concerns with the limitation of defining residential rooftop solar as BTM. The commenter appreciated the efforts to set aside an allocation for residential rooftop solar, but the commenter believed that the Proposed Rules go too far by defining residential rooftop solar as solely BTM. This commenter explained that Connecticut's regulated utilities offer a FTM solar tariff for residential and commercial solar projects and that FTM residential solar projects, though somewhat rare in Connecticut, are particularly attractive for projects in low-income communities. Therefore, this commenter suggested an updated definition that accounted for single family or multi-family residential that does not qualify under Category 3 and has a maximum net output (and is not limited as BTM). Another commenter noted that BTM arrangements are not achievable in States like Vermont and offered suggestions for redefining BTM.

Commenters had other suggestions on how to handle the sub-reservations in Category 1. One commenter

recommended expanding the criteria for qualifying Category 1 projects to allow 600 MW (85 percent) of the allocated MW for FTM facilities. Another commenter noted that if the concern is that the 700 MW capacity allocation will be monopolized by businesses in low-income areas, the rules could reserve a portion of the total allocation for businesses, but that the rules should consider a larger reservation for commercial and industrial scale solar projects for non-profit community organizations, public entities, and other impactful entities that play a key role in these low-income communities. This commenter suggests considering, in addition to the 140 MW reservation for businesses, a 280 MW carve out for residential solar and a separate 280 MW carve out for community-based not-for-profit organizations. Another commenter suggested a sub-allocation of at least 400 MW for BTM installations at community facilities.

One commenter suggested that if the 560 MW amount cannot be changed, the rules should allow any facility that serves at least 50 percent residential customers to qualify. This commenter noted that the goal of the sub-reservation is a laudable intent, but that community solar, though predominantly deployed FTM, is also positioned to serve residential customers, especially low-income customers. Another commenter recommended altering the sub-reservations by providing a third sub-reservation in Category 1 of at least 150–200 MW for eligible community solar projects that are located on (non-residential) rooftops or parking lots in low-income communities, are less than 1 MW, reserve at least 50 percent of off-take for low-income households, and offer a minimum 20 percent discount to low-income subscribers.

Two commenters had additional concerns with Category 1, particularly related to consumer protections for residential customers. While this commenter is opposed to prioritization of residential rooftop solar over other types of solar installations within Category 1, the comment implied this is because of serious consumer protection issues associated with how these allocations are being implemented by the private marketplace. This commenter provided an example of solar installers telling potential customers that the IRS will send them a check for 70 percent of the cost of the solar installation if they sign up with the installer. Therefore, this commenter encourages the Treasury Department and the IRS to be vigilant and to ensure that companies awarded these credits are held accountable within the scope of

the Treasury Department and the IRS's authority.

After consideration of the comments recommending elimination or significant modification of the rules regarding the Category 1 sub-reservation, the comments are not adopted. The purpose of the residential BTM sub-reservation is to preserve capacity for projects that directly benefit residential customers and would not otherwise be eligible for Category 3 or Category 4, while also recognizing the large and established market share of companies using the TPO single-family residential business model. Additionally, residential BTM (of which the majority is expected to be single-family) have faster development timelines, allowing this capacity to be efficiently allocated. Moreover, a separate set-aside allows like-projects to compete for capacity and will allow for more streamlined application processing.

Accordingly, the final regulations provide that the Program includes a sub-reservation for eligible BTM residential facilities but clarifies that the specific amount of the sub-reservation for a Program year will be provided in guidance published in the Internal Revenue Bulletin. The final regulations also clarify that the amount of the sub-reservation is established based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. Revenue Procedure 2023-27 provides the Category 1 sub-reservation for eligible BTM residential facilities for the 2023 Program year.

In response to the commenters' concerns about restrictions on FTM facilities and the ability of community facilities to apply for Category 1, FTM community facilities serving residential customers may apply for an allocation of the remaining Capacity Limitation in Category 1 and receive a section 48(e) Increase of 10 percentage points, assuming they do not meet Category 4 requirements, or apply for an allocation under Category 4 if they meet all of the requirements of Category 4 and receive a section 48(e) Increase of 20 percentage points. The Treasury Department and

the IRS note that the rules do not impose additional requirements on Category 1 beyond the statutory location requirement, given the importance of creating an objective and administrable process that will allow taxpayers to quickly receive feedback on their applications. However, the Treasury Department and the IRS seek to encourage community solar projects to apply in Category 4 as opposed to Category 1 because, although Category 1 facilities must be located in low-income communities, they do not necessarily have to serve low-income customers and do not have to comply with Category 4 financial benefits requirements. Therefore, directing more community solar projects to Category 4 where there is a protected set aside of 700 MW better promotes programmatic goals.

In response to comments, the Treasury Department and the IRS agree that the 560 MW carve-out for residential BTM limits the potential for community organizations such as non-profit organizations and municipalities that serve communities from obtaining an allocation, and they will need to compete for limited capacity with for-profit nonresidential businesses (and all other projects that are located in a low-income community). As a result, the Treasury Department and the IRS modified the Category 1 sub-reservation for BTM residential in Revenue Procedure 2023-27 to reduce this sub-reservation to 490 MW for the 2023 Program. Therefore, a larger portion of the Capacity Limitation in Category 1 (210 MW) will be available to FTM and non-residential BTM projects. The Treasury Department and the IRS may change this sub-reservation amount for future years.

The Proposed Rules defined a FTM facility as a facility that is directly connected to a grid, and its sole purpose is to provide electricity to one or more offsite locations via such grid; alternatively, FTM is defined as a facility that is not BTM.

The Proposed Rules defined an eligible residential BTM facility as single-family or multi-family residential qualified solar or wind facility that does not meet the requirements for Category

3 and is BTM. A qualified wind and solar facility is BTM if: (1) it is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located, (2) it is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and (3) its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located. Commenters requested clarification on the meaning of "residential."

The final regulations generally adopt the definition of BTM from the proposed rules, but the final regulations clarify that a qualified solar or wind facility is residential if it generates electricity for use in a dwelling unit used as a residence. The final regulations also clarify that a facility is FTM if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. For the purposes of Category 4, a qualified solar or wind facility is also FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.

X. Application Process

A. Documentation and Attestations

The Proposed Rules provided the general framework for evaluating applications for Capacity Limitation, including that applicants would be required to submit with each application certain information, documentation, and attestations specified in Program guidance.

The Proposed Rules described the following required documents and attestations.

DOCUMENTATION AND ATTESTATIONS TO BE SUBMITTED FOR ALL FACILITIES

	FTM	BTM ≤1 MW AC	BTM >1 MW AC
Proposed Document Requirement			
An executed contract to purchase the facility, an executed contract to lease the facility, or an executed PPA for the facility.	No	Yes	Yes.
A copy of the final executed interconnection agreement, if applicable ⁹	Yes	No	Yes.

DOCUMENTATION AND ATTESTATIONS TO BE SUBMITTED FOR ALL FACILITIES—Continued

	FTM	BTM ≤1 MW AC	BTM >1 MW AC
Proposed Attestation Requirement			
The applicant has site control through ownership, an executed lease contract, site access agreement or similar agreement between the property owner and the applicant.	Yes	No	No.
The facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to obtain such permits.	Yes	Yes	Yes.
The applicant is in compliance with all Federal, State, and Tribal laws, including consumer protection laws (as applicable).	Yes	Yes	Yes.
The applicant has appropriately sized the facility (to meet no more than 110 percent of historical customer load).	No	Yes	Yes.
The applicant has appropriately sized the customer's facility output share and has based facility output share on historical customer load.	Yes	No	No.
The applicant has inspected installation sites for suitability (for example, roofs)	Yes	Yes	Yes.

DOCUMENTATION AND ATTESTATIONS TO BE SUBMITTED FOR CERTAIN FACILITIES DEPENDING ON CATEGORY AND ASC

	Category 1	Category 2	Category 3	Category 4
Proposed Document Requirement				
Documentation demonstrating property will be installed on an eligible residential building.	No	No	Yes	No.
Plans to ensure tenants receive required financial benefits	No	No	Yes	No.
<i>If applying under ASC:</i> Documentation demonstrating applicant meets Ownership Criteria.	Yes	Yes	Yes	Yes.
Proposed Attestation Requirement				
Facility location is eligible ¹⁰	Yes	Yes	No	No.
Consumer disclosures informing customers of their legal rights and protections have been provided to customers that have signed up and will be provided to future customers.	Yes	Yes	Yes (provided to tenants).	Yes.
The applicant will ensure at least 50 percent of the facility's total output will be provided to qualifying low-income households and that each receive at least a 20 percent bill credit discount rate.	No	No	No	Yes.
<i>If applying under ASC:</i> Facility location is eligible based on PPC/CEJST	Yes	No	Yes	Yes.

The final regulations adopt the requirement that applicants must submit specified information, documentation, and attestations to demonstrate Program eligibility and project viability but clarify that the specific information, documentation, and attestations will be provided in guidance published in the Internal Revenue Bulletin. For the 2023 Program year, Revenue Procedure 2023–27 provides the application requirements. The specific information,

documentation, and attestations that applicants are required to submit may get updated in future Program guidance for Program years following 2023.

In developing the application requirements for the 2023 Program year provided in Revenue Procedure 2023–27, the Treasury Department and the IRS carefully considered the comments submitted in response to the Proposed Rules.

One commenter requested that the Treasury Department and the IRS design the application intake mechanism to allow for bulk application submissions, including attestations. For example, the commenter stated that applicants could potentially be allowed to submit a spreadsheet for many projects at one time, along with required attestations. The commenter also cited to the efficient allocation language at section 48(e)(4)(A), which states “. . . the Secretary shall provide procedures to allow for an efficient allocation process, including, when determined appropriate, consideration of multiple projects in a single application if such

projects will be placed in service by a single taxpayer.”

One commenter cited to the language in the Proposed Rules that states a Category 1 or Category 2 facility that also qualifies as a Category 3 or Category 4 facility is considered a Category 3 or Category 4 facility, and requested that these facilities be automatically reviewed under Category 1 if their application is denied for an allocation in Category 4. As provided in Revenue Procedure 2023–27, the Treasury Department and the IRS will not move applications from the category and sub-reservation under which the facility owner applied for an allocation. The statement the commenter cited was intended to remind applicants that if their facility meets the requirements under Category 1 or 2 and under Category 3 or 4, the applicant should apply under Category 3 or 4, as applicable, to be considered for the section 48(e) Increase of 20 percentage points. Additionally, as provided in Notice 2023–17 and Revenue Procedure 2023–27 each applicant may only apply

⁹ If an interconnection agreement is not applicable to the facility (for example, due to utility ownership), this requirement is satisfied by a final written decision from a Public Utility Commission, cooperative board, or other governing body with sufficient authority that financially authorizes the facility. If the facility is located in a market where the interconnection agreement cannot be signed prior to construction of the facility or interconnection facilities, this requirement is satisfied by a signed conditional approval letter from the jurisdictional utility and an affidavit from a senior corporate officer of the applicant (or someone with authority to bind the applicant) stating that an interconnection agreement cannot be executed until after construction of the facility.

¹⁰ Facility location would be reviewed using latitude and longitude coordinates when possible.

for consideration of its facility, or for each facility if the applicant owns multiple facilities, under one category in 2023. If the facility is not awarded an allocation under the category in which the applicant applies, the facility will not be considered for an allocation in another category.

1. Permits

Several commenters were concerned with the required attestation that the facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to obtain such permits. A few commenters suggested alternatively that the rule instead require applicants to provide sufficient documentation that the project “expects to receive” or has received all necessary permits to comply with and Federal, State, or local requirements. Another commenter uses the phrase “proof of initiating” in its suggestion.

Commenters provided reasons for their concerns about the required permits. For example, a commenter stated that the requirement to have all necessary permits in place as a requirement for application (given the limited application window) as out of their direct control and not necessary given the other requirements of the guidelines. Another commenter considering the same issue noted that because there is tremendous variation in the scope and applicability of State and local permit requirements that eligible projects may be subject to depending on their geographic location, a completed permit requirement would serve to disqualify projects in locations that have suitable and appropriate permitting requirements and potentially advantage projects either already advancing without the benefit of Federal support or projects in jurisdictions with the lowest State and local permitting requirements.

Additionally, commenters requested guidance on the definition of non-ministerial permits. For example, a commenter requested clarity on whether “local non-ministerial permits” includes such things as building and/or electrical permits. The commenter noted their agreement with the need to ensure applications for projects that are likely to move forward but that obtaining such permits requires significant expenditure of funds and investment of time in a project and that if all permits are required, many developers will be unlikely to invest in projects that need the low-income community bonus credit. Other commenters assumed building permits are required as non-ministerial permits and noted their

disagreement with the requirement. Another commenter suggested that the Treasury Department and the IRS should clarify whether the appeals period for non-ministerial permits must have lapsed prior to application submission. Finally, a commenter noted that given the uncertainty of a competitive program, projects should not be required to secure building permits. Another commenter said rooftops particularly should not require building permits in the application. Further, one commenter requested that if a roof is found to be unsuitable for installation of a facility, after an inspection, that the application to the Program allow for the inclusion of a scope of work contract to make the roof suitable, in lieu of attesting that the roof is suitable. The commenter additionally requested that the cost of such construction work be allowed to be included in the cost of the overall installation.

The Treasury Department and the IRS considered these comments but determined that a standard such as “expects to receive” or has “proof of initiating” with respect to required permits is not enough to demonstrate sufficient project maturity to give assurances of the viability of the project. As explained in the Proposed Rules, section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process. Additionally, section 48(e)(4)(E)(i) requires that facilities allocated an amount of Capacity Limitation be placed in service within four years of the date of allocation. Therefore, as explained in the Proposed Rules, the Treasury Department and the IRS determined that to promote efficient allocation and to ensure that allocations will be awarded to facilities that are sufficiently viable and well defined to allow for a review for an allocation and sufficiently advanced such that they are likely to meet the four-year placed in service deadline, applicants are required to submit certain documentation and attestations when applying for an allocation. This requirement includes an attestation that the facility has obtained all applicable Federal, State, Tribal, and local non-ministerial permits, or that the facility is not required to obtain such permits, which demonstrates completion of a critical project milestone.

In response to the concerns commenters raised regarding the lack of clarity with respect to the definition of non-ministerial permits, the Treasury Department and the IRS included the following definition of non-ministerial permits in Revenue Procedure 2023–27,

clarifying that building and electrical permits are not considered non-ministerial permits. Revenue Procedure 2023–27 provides that non-ministerial permits are defined as: “Permits in which one or more officials or agencies consider various factors and exercise some discretion in deciding whether to issue or deny permits. This does not include ministerial permits based upon a determination that the request complies with established standards such as electrical or building permits. Non-ministerial permits typically come with conditions and usually require public notice or hearings. Examples of non-ministerial permits include local planning board authorization, conditional use permits, variances, and special orders.” Lastly, on the question of whether the appeals period for non-ministerial permits must have lapsed prior to application submission, the lapse of this period is not a requirement for application submission.

With respect to the comment about unsuitable roofs, applicants will continue to be required to attest that the location of the qualifying facility has been determined suitable for installation at application, to give assurances of the viability of the project. Additionally, the Treasury Department and the IRS cannot accommodate the request for the cost of roof repairs to be includable in the overall cost of the project, presumably, so that the repair costs are eligible costs for determining the bonus credit amount. The statutory language provides for the energy percentage increase with respect to eligible property that is part of a solar or wind facility. The roof of a building is not part of a solar or wind facility, and therefore, costs associated with building improvements are not includable in the basis of the solar or wind facility to determine the section 48(e) Increase.

2. Interconnection Agreements

Several commenters disagree with the documentation requirement in the Proposed Rules that for FTM and BTM larger than 1 MW, a copy of the final executed interconnection agreement, if applicable, is required. Commenters suggested that requiring negotiated or approved interconnection agreements is premature for the first application period. Some commenters suggested an interconnection proxy, such as a submitted interconnection application or some other documentation from the utility that acknowledges the interconnection process has formally begun.

Many commenters noted practical considerations. For example, a commenter pointed out that an executed

interconnection agreement and all applicable permits are typically received up to the date (and often after) a financial closing on a transaction occurs; it is not anticipated that a debt and equity investor will close on financing without prior receipt of an award letter by the IRS. Therefore, the commenter argues that requiring such documents at time of application will slow down the development process, increase the cash requirements of a developer prior to financial closing, and lengthen the construction timing. The commenter instead suggests that these documents be required when the facility is placed in service. As an alternative for the application, this commenter suggests requiring teaming agreements be in place and that each of the teaming parties provide a resume outlining at least 3 years of experience obtaining permits and interconnection agreements within the specified jurisdictions along with the number of renewable energy facilities that each of the parties has placed in service in such jurisdictions. Echoing that concern, another commenter suggested that this requirement of mandating signed interconnection agreements sets a high bar and would only make the Program accessible to those developers with financing readily available for upgrades before being accepted into the Program. Another commenter provided that an applicant should not be disadvantaged due to stricter requirements on permitting and interconnection agreements in one locality versus another. Another commenter said that by requiring eligible projects to submit final executed interconnection agreements, the Treasury Department and the IRS prevent taxpayers in certain States from being able to apply for capacity under the Program. The commenter explained that in California, Connecticut, North Carolina, and Washington, DC, utilities often do not execute or sign interconnection service agreements until after a project has received permission to operate (PTO). The commenter noted that a footnote in the Proposed Rules elaborates that if a taxpayer is not able to present a signed interconnection agreement, the taxpayer can instead submit a final written decision from the Public Utilities Commission or other governing body or a signed conditional interconnection approval letter that authorizes the facility. However, the commenter said that these alternatives to providing an executed interconnection agreement are infeasible in States and regions like those listed. The commenter suggests as an alternative to the proposed

rulemaking, the Treasury Department and the IRS should allow taxpayers to submit an unsigned or customer-signed contingent approval to interconnect for projects located in utility zones that don't provide executed interconnection agreements until PTO.

Other commenters suggested additional alternatives. For example, instead of an executed interconnection agreement, a commenter suggested allowing FTM facilities to submit interconnection applications and studies. Another commenter also suggested proof of an interconnection application stating it should be adequate given the differing processes across utilities districts (which reiterates the comment earlier describing limitations in certain States and Washington, DC). Another suggestion for a larger project is proof that such project has an active queue position and an attestation from the applicant that the project is not in default, payment or otherwise, with the relevant transmission and distribution companies. This commenter pointed out that with the time required, most applicants with an actual executed interconnection agreement started their projects before the IRA was enacted. This commenter suggested that for future application rounds for larger projects, an "executed interconnection agreement" may be a more feasible expectation. Another commenter similarly suggested that projects that are actively in the queue for interconnection, and projects with a proposed timeline for site interconnection application should suffice. Lastly, a commenter recommended that for BTM projects smaller than 1 MW, a "limited notice to proceed" with an EPC (engineering, procurement and construction) contractor authorizing the EPC to produce a design for a renewable energy facility and apply for interconnection should be considered adequate documentation in lieu of an executed contract to purchase the energy facility.

The Treasury Department and the IRS considered these comments but ultimately decided not to make a change to the interconnection agreement requirements, and the proposed requirements are included in Revenue Procedure 2023–27. For the same reasons explained earlier under part X.A.1. of this Summary of Comments and Explanation of Revisions section, the interconnection agreement documentation requirements are necessary to achieve Program goals including ensuring applications represent mature, viable projects. In response to the comment that these projects with executed interconnection

agreements would have begun prior to the implementation of the IRA, the Treasury Department and the IRS believe that this issue will be mitigated as the Program progresses.

Additionally, in response to the commenters who raised scenarios where interconnection agreements are not possible or feasible, footnote 9 of the Proposed Rules explained that if the facility is located in a market where the interconnection agreement cannot be signed prior to construction of the facility or interconnection facilities, the interconnection agreement requirement is satisfied by a signed conditional approval letter from the jurisdictional utility and/or an affidavit from a senior corporate officer of the applicant (or someone with authority to bind the applicant) stating that an interconnection agreement cannot be executed until after construction of the facility. The Treasury Department and the IRS determined that this alternative provided in the Proposed Rules covers the scenarios identified by commenters. Lastly, a commenter requested clarification if an interconnection service agreement (ISA) is amended after submission of the initial application, whether this amendment must be submitted to the Treasury Department and the IRS. Details on these procedural requirements will be provided in later Program information.

3. 110 Percent Historical Customer Load

Generally, commenters requested eliminating the attestation that the applicant has appropriately sized the facility (to meet no more than 110 percent of historical customer load). One commenter stated that many utility rules for net metering already have a limit (typically 125 percent), and the Program rules should defer to those local rules. The commenter said these limits can be verified or validated through the approved interconnection agreement (or utility approval of rooftop solar projects). Furthermore, this commenter, similar to others described previously, agrees with the idea that size should be able to increase noting that if a Tribal housing authority or Tribal member also implements electrification efforts, the electric load of a Tribal residence will increase and that rooftop solar projects should be allowed to "oversize" with the expectation that the load will increase.

At least one commenter recognized that the purpose of a limitation may be to prevent abuse or waste in connection with the ability to claim section 48 credits, but the commenter anticipated there would also be renewable energy projects that could feasibly produce and

benefit from more than 110 percent of historical customer load. Another commenter argued that after the IRA, energy usage is likely to increase with the adoption of heat pump technology, electric vehicle chargers, and induction stoves, for example, so applicants need to build solar facilities that account for increased future usage. The commenter believed that the flexibility to oversize facilities relative to customers' current demand could be a way to provide direct financial benefits to residents of affordable housing properties noting that the commenters' particular technology allows facilities to maximize the size of the roof to produce net energy metering credit beyond the host properties' consumptions. The commenter explained the credits can then be allocated to qualifying low-income customers in the surrounding neighborhood including those who live in buildings that cannot support solar facilities. Similarly, focusing on arguments that the limitation prevents greater benefits to low-income individuals, another commenter agreed that facility sizing requirements should be set at the local/utility level and not specified in the Program requirements because limiting the size of the facility will reduce the benefits available to tenants. Another commenter mentioned the need to expand the limitation due to the need to accommodate the installation of defined electrification projects.

Another commenter gave additional reasons why it views the limitation as problematic noting that a Category 3 residential building may have multiple historical customer loads; this concept of limiting facility size to historical customer loads has previously been proposed to reduce the size of onsite solar facilities, limit financial benefits, and hinder overall distributed generation, which contradicts the intent of the statute; and that a limit to BTM facilities creates significant inconsistencies with other provisions of guidance referring to the fact that in certain States a Category 3 facility may only be allowed to interconnect to the local utility grid through a BTM configuration and this rule might be inconsistent with the requirement on 50 percent financial benefits.

Comments on behalf of Tribal entities also disagreed with the limitation. These commenters said that for Tribal housing clean energy projects that qualify under Category 3, the rule should not limit the size of a BTM project to 110 percent of load. Additionally, one commenter stated that many utility rules for net metering already have a limit (typically 125

percent of historical load) and another commenter said that several States permit facilities of up to 200 percent historical load, and the rules should defer to those local rules. The commenter said these limits can be verified or validated through the approved interconnection agreement (or utility approval of roof top solar projects). Furthermore, this commenter, similar to others described previously, agrees with the idea that size should be able to increase, noting that if a Tribal housing authority or Tribal member also implements electrification efforts the electric load of a Tribal residence will increase and that rooftop solar projects should be allowed to "oversize" with the expectation that the load will increase.

While some commenters recommended removing the limitation, other commenters suggested modifications. One commenter suggested slightly increasing the historical customer load limitation to 120 percent based on rules in place in Minnesota for BTM facilities. Another commenter seemed to agree with keeping the attestation but removing the limit, noting that the rules simply require attestation that the project is appropriately sized based on applicable State and local solar program or utility interconnection rules, which they generally must already comply with, and that this would better accommodate concurrent or future additions of electrical load. Another commenter agreed with keeping the attestation and removing the limitation but noted that if the 110 percent of historical customer load requirement is retained, it should be clarified to allow for reasonable estimates of customer usage in cases where the customer does not have a full 12 months of historical usage at the specific location. Lastly, one of the commenters suggested as an alternative, and to maintain a rule that will preclude gaming, the following attestation requirement along the lines of the Category 4 attestation: "For any facility that is projected to produce more than 110 percent of the its host property's historic annual kWh energy consumption, the applicant will ensure that either (A) any exported kWh will be provided to occupants of a qualified residential property at a 20 percent or greater bill credit discount related to the host property's volumetric export compensation rate for solar kWh, or (B) the applicant has reasonably accounted for an anticipated increase of the applicable building's energy consumption." Similarly, another commenter also thought the attestation

for Category 3 should be similar to that for Category 4 noting that "applicants should not be constrained to '110 percent of the historical customer load' for rooftop projects for Categories 3 and 4. A more reasonable approach would be to size the 'customer's facility output share' appropriately as is proposed for FTM projects.

One commenter asked for clarification on how the Treasury Department and the IRS plan to define "appropriately sized" for purposes of the requirement applicable to FTM projects that the "applicant has appropriately sized the customer's facility output share and has based facility output share on historical customer load." This commenter suggested as an example that their standard process for determining subscribers' allocation sizing is to size allocations at 85–90 percent of the customer's 12-month historical average kWh usage. The final regulations will not adopt a more detailed standard on this term and will use a reasonableness approach on whether an output share is appropriately sized.

In response to these comments, the Treasury Department and the IRS believe that the attestation for BTM facilities related to the host properties' historic energy usage should be retained to prevent Capacity Limitation allocations from going to facilities that are oversized. However, the Treasury Department and the IRS recognize the need to modify the attestation requirement to account for future load projections and to not limit sizing to 110 percent where State and local requirements may allow for more. Accordingly, Revenue Procedure 2023–27 includes the following revised attestation requirement: "The applicant has appropriately sized the facility, or the customer/offtaker subscriptions will be sized to meet the customer's energy needs, considering historical customer load and/or reasonable future load projections, in accordance with applicable State and local requirements."

4. Tribal Documentation Requirements

Some Tribal commenters requested modifications specifically regarding Tribal documentation requests. Commenters stated that development on certain Category 2 Indian land are subject to Tribal approval and regulatory authority and involve the co-management of the Department of Interior. To ensure applicants on Indian land understand documentation requirements, these commenters requested that the attestation requirements reflect a Tribal approval or a Tribal resolution for projects on lands

subject to Tribal civil jurisdiction under 25 U.S.C. 3501(2)(A)–(B).

The United States has a trust relationship with Tribal governments whereby the Federal government manages certain Indian land for Tribal governments and Tribal citizens as the beneficial owners based on the cessation of Tribal lands.¹¹ As a component of this relationship, Tribal governments are recognized as nations with inherent sovereignty and the ability to exercise criminal and civil jurisdiction over lands classified as Indian Country, which includes all lands identified in 25 U.S.C. 3501(2)(A)–(B).¹² This civil authority includes the right to regulate activities on their lands including taxation, and the ability to condition consent for development on Indian land via regulatory processes that might include approvals, permitting, and the right of exclusion.¹³ With regard to land described in 25 U.S.C. 3501(2)(C), Alaska Native Corporations have management and regulatory authority over their lands under the Alaskan Native Claims Settlement Act.¹⁴ Because Tribal governments and Alaska Native Corporations must approve development on Indian land described in 25 U.S.C. 3501(2)(A)–(C) under existing legal authorities, the comment to include Tribal approval as an attestation requirement for applications for a Category 2 allocation on such lands is adopted.

One commenter also suggested that Tribally owned qualified solar or wind facilities have priority [for an allocation] over other third-party facility owners with respect to Category 2. Another commenter stated that Category 2 allocation should be fully reserved (not 50 percent reserved) for projects that meet the Tribal Ownership Criteria.

Commenters provided that projects owned directly by a Tribe, Tribal enterprise, Tribal utility, or Tribal housing authority, regardless of the category, should not have to comply with certain documentation and attestation requirements, such as site control, customer disclosures, benefit sharing agreement requirements, leases, contracts to purchase, PPAs (which should only be required if the project is structured to include a third-party owner), permits, and compliance with Tribal law. Another commenter agreed

that for transactions not involving third parties, Tribes should not be required to provide certain application or attestation documents, and that Tribes should be able to self-certify that qualifying projects are compliant. Other Tribal commenters support the ability to self-certify and additionally advised the Treasury Department and the IRS not to rely on external census data to track poverty levels on Indian land. Similarly, another commenter agreed that documentation requirements should be tailored for Category 3 and Tribal-enterprise owned projects should be allowed more flexibility, based on Tribal recommendations.

The Treasury Department and the IRS considered these comments but did not adopt them in Revenue Procedure 2023–27 because, as explained in the Proposed Rules, the documentation and attestation requirements are critical for all projects to ensure an efficient allocation process (that is, to ensure that projects receiving an allocation are viable and can satisfy Program requirements). Moreover, some of the requirements, such as site control, permits, and compliance with Tribal laws are attestations that merely require Tribal entities to attest that the Program requirements are satisfied, similar to self-certification.

5. Other Documentation Requirements

A commenter suggested that the Treasury Department and the IRS require applicants to submit documentation that they have received (or have contracted with a service provider that will be handling beneficiary personally identifiable information and that has received) a third-party cybersecurity assessment against a technology industry-standard framework such as SOC 2 Type II (sponsored by the American Institute of Certified Public Accountants), and that the assessment does not include unaddressed or unremediated material findings.

The Treasury Department and the IRS recognize that the Program requires information and documentation that may contain confidential information. The IRS and DOE are following all required protocols to protect information submitted to the IRS or DOE. However, the Treasury Department and the IRS think that it would be administratively impractical to impose cybersecurity assessment requirements on applicants, so this suggestion is not included in Program guidance.

Another commenter provided that the final regulations should confirm that executed contracts and other documents

containing personally identifying and/or business confidential information submitted in connection with the applications constitute trade secrets and/or commercial or financial information that is exempt from disclosure under the Freedom of Information Act (FOIA).

After consideration of this comment, it is not adopted in these final regulations. Commenting on the IRS, DOE, or the Treasury's Department's response to any FOIA request is outside the scope of what can be appropriately addressed in Program guidance.

In contrast to the commenters who requested relaxing or eliminating certain documentation and attestation requirements, three commenters were supportive of the project maturity requirements and some suggested that the final regulations should impose additional requirements. One commenter is pleased that maturity requirements for all capacity categories are included and recommends further strengthening these maturity requirements by necessitating a documentation requirement providing an interconnection agreement or State approved interconnection process, a community solar State program capacity award or a PPA, and proof of non-ministerial permits rather than an attestation. The other commenter suggested enhancing application requirements for the initial application period and subsequent rolling application process. The commenter suggests that demonstration of site control (for example, an executed contract, lease, or option to lease or purchase or similar agreement between the property owner and the developer/installer) and all non-ministerial permits should be included as a “Proposed Document Requirement,” rather than a “Proposed Attestation Requirement” for FTM and BTM that are smaller than 1 MW. The commenter says these milestones, as well as an executed interconnection agreement, are clearest and most efficient. The final commenter was supportive as long as the information submitted was kept strictly confidential and not subject to public disclosure as discussed earlier.

For Category 3 specifically, one commenter suggested that the Documentation and Attestations table should be updated to add a line for “An executed contract to purchase the facility, an executed contract to lease the facility, or an executed power purchase agreement for the facility.” This same commenter also suggested that for Category 3, there should be a multifamily building financial benefits assignment plan to illustrate how the

¹¹ See *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832) (setting forth foundational principles of Federal Indian law).

¹² *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 147 (1982).

¹³ See 25 CFR 169.10 and 25 CFR part 162.

¹⁴ See 43 U.S.C. 1601.

financial benefits will reach the tenants. Additionally, this commenter said the rules should implement milestone requirements along this four-year period to ensure the complete and efficient usage of the annual capacity limitation (speed timeline for placing in service).

Other commenters included suggestions for documentation alternatives or requests for clarification on documentation requirements. One commenter suggested that for BTM projects, site control should also be accepted through other recordable documents such as “Option Agreements” or “Memoranda of Understanding,” including attestation that such documents exist, similar to what the transmission and distribution companies accept for site control. The commenter stated that the three documents listed as required in Table 1 for BTM are all proprietary to an applicant and contain business sensitive information. In addition, executing these documents may depend on if the applicant receives the “adders (bonus).” To clarify, the site control document attestations are required for FTM; these attestations are not required for BTM so this commenter’s particular concerns do not arise. Another commenter asked for clarification whether a lease option agreement satisfies the requirement for FTM facilities, which requires showing that the applicant has site control through ownership, an executed lease contract, site access agreement or similar agreement between the property owner and the applicant. The same commenter asked also for clarification that a submitted executed contract may have an execution date of August 16, 2022, or later. Lastly, a commenter urged the Treasury Department and the IRS to consider a guaranteed maximum price contract or other design/build contract in lieu of the requirement that BTM facilities provide documentation in the form of an executed contract to purchase the facility, an executed contract to lease the facility, or an executed PPA for the facility. This commenter said that in most cases, the commenter expects to develop the project themselves and hire a contractor to install the solar arrays, and so there would be no need for a purchase, lease, or PPA contract.

The Treasury Department and the IRS considered these comments but decided not to impose additional requirements. The Treasury Department and the IRS view the Proposed Rules as striking the right balance between requiring adequate documentation and attestations to ensure projects are viable and well defined to allow for a review for an allocation, and sufficiently

advanced such that they are likely to meet the four-year placed in service deadline, while not being unduly burdensome for applicants. Additional documentation and attestations suggested by these commenters do not appear necessary to verify compliance with Program requirements.

On the requests for alternatives (a lease option agreement requested by one commenter and guaranteed maximum price contract or other design/build contract requested by another), the Treasury Department and the IRS also considered these suggestions but believe the original documents described in the Proposed Rules are best able to demonstrate a project is viable and well defined to allow for a review for an allocation, and sufficiently advanced such that they are likely to meet the four-year placed in service deadline, while not being unduly burdensome for applicants. Lastly, on the question of timing and whether a submitted executed contract may have an execution date of August 16, 2022, or later, the rules do not have any date restrictions on the documentation required.

B. Lottery

The Proposed Rules also provided a that a lottery system may be used in oversubscribed categories to decide among similarly situated applications.

A few commenters requested that the lottery process be eliminated, and that the application process be entirely on a first-come, first-served basis. One commenter advised against a lottery system and advised that in the event the Program is oversubscribed, the Treasury Department and the IRS should select projects based on “project readiness”, which, the commenter states, in most existing solar markets, uses the earliest-in-time date of permit or ISA as a proxy for project maturity. Other commenters stated that they understand the purpose of a lottery in tie-breaker situations, but caution that a lottery may incentivize speculative project developers. The Treasury Department and the IRS made the decision to retain the lottery to provide an equitable review process for similarly situated applications. Due to the anticipated volume of applications, it would not be administratively feasible to select between applications for similar situated facilities that are submitted during the same time period for review without a lottery process that objectively prioritizes projects for review. The lottery process will allow for an efficient allocation process by ordering applications for review and allowing applications to be divided

among reviewers for simultaneous review.

The final regulations adopt the lottery system from the Proposed Rules to be used if a facility category or sub-reservation is oversubscribed but clarifies that details regarding how the lottery procedures will operate are specified in guidance published in the Internal Revenue Bulletin. The final regulations also clarify that a category or sub-category is oversubscribed if it receives applications in excess of Capacity Limitation reserved for the facility category or reservation within a facility category. For the 2023 Program year, Revenue Procedure 2023–27 provides the application review and selection procedures. The specific review and selection procedure may be updated in future Program guidance for Program year 2024.

C. Application Window

The Treasury Department and the IRS proposed an approach that includes an initial application window in which applications received by a certain time and date would be evaluated together, followed with a rolling application process if Capacity Limitation is not fully allocated after the initial application window closes.

Several commenters requested a first-come, first-served application process, with a few commenters adding that it should be first-come, first-served with respect to projects that are similarly situated. Additionally, several comment letters referred to the 60-day application period previously provided for the Program under Notice 2023–17. These comment letters generally state that a 60-day period is too short and request instead that the Program accept applications on a rolling basis. The Proposed Rules already provided for a change from the 60-day window under Notice 2023–17. This change was noted under “Selection Process” in the Proposed Rules.

As provided in Revenue Procedure 2023–27, for Program year 2023 there will be an initial 30-day window followed by a rolling application process thereafter for any capacity that remains in a given category or sub-reservation. At the end of the initial window, any category or sub-reservation that is oversubscribed will be subject to the lottery system. Applications may still be submitted in oversubscribed categories or for the Category 1 sub-reservation after the 30-day period and until the close of a Program year. Those applications may be reviewed in the order received only after DOE’s review and the IRS’s award determinations regarding all applications submitted

within the first 30 days. Applications submitted will only be reviewed if there is remaining Capacity Limitation. Applicants should refer to Revenue Procedure 2023–27 for additional details regarding the Program application process.

A few commenters additionally suggested that any category that has remaining capacity at the close of the Program for a particular capacity year should enter into a continuous rolling application process, rather than requiring a new application window. One commenter further specified that if the category remains in a rolling application process through the end of the calendar year, then on January 1 of the following year, new annual capacity should be allocated to the category and the rolling application process should continue. Otherwise, these commenters state that there will be a backlog of applications. One of the commenters also urged the Treasury Department and

the IRS to create a waitlist for the following year's capacity allocation, with applications prioritized in the order received. This commenter stated that this would obviate the need for a lottery system for similarly situated applications in oversubscribed categories. Finally, a few commenters expressed concern about the short application period for the 2023 Program year. These commenters generally stated their belief that the 2023 Program will close on December 31, 2023 and that any unallocated Capacity Limitation will immediately rollover and be added to the 2024 Capacity Limitation on January 1, 2024.

The Treasury Department and the IRS will assess the 2023 Program and initial applications before determining any capacity changes to the 2024 Program and any changes to the application process. The Treasury Department and the IRS can also adjust Capacity Limitation among categories within a

Program year. Moreover, although the statute provides for a Capacity Limitation for each calendar year, with the ability to rollover unused Capacity Limitation to the next year, there is no requirement to close the application and allocation period for the 2023 Program year on December 31, 2023. Applicants should refer to Revenue Procedure 2023–27 for additional details regarding the Program application process.

XI. Documentation and Attestations To Be Submitted When Placed in Service

The Proposed Rules also required facilities that received a Capacity Limitation allocation to report to DOE that the facility has been placed in service, and to submit additional documentation or complete additional attestations with this reporting.

The Proposed Rules provided that an owner must submit documentation or attest to the following:

	Category
Proposed Attestation Requirement	
Confirmation of material ownership and/or facility changes from application or that there has been no change from the application.	All.
Proposed Document Requirement	
Permission to Operate (PTO) letter (or commissioning report verifying for off-grid facilities) that the facility has been placed in service and the location of the facility being placed in service.	All.
Final, Professional Engineer (PE) stamped as-built design plan, PTO letter with nameplate capacity listed, or other documentation from an unrelated party verifying as-built nameplate capacity.	All.
Benefits Sharing Agreement for qualified residential building projects between building owner and tenants (including for facilities that are third-party owned, additional sharing agreement between the facility owner and the building owner).	3.
Final list of households or other entities served with name, address, subscription share, and income status of qualifying low-income households served, and the income verification method used.	4.
Spreadsheet demonstrating the expected financial benefit to low-income subscribers to demonstrate the 20 percent bill credit discount rate.	4.

The final regulations adopt the requirement that the owner of a facility must report to DOE that the facility has been placed in service, and to submit additional documentation or complete additional attestations with this reporting but clarify that the specific information, documentation, and attestations that applicants are required to submit will be specified in guidance published in the Internal Revenue Bulletin. For the 2023 Program year, Revenue Procedure 2023–27 provides the placed in service documentation procedures. The specific information, documentation, and attestations that applicants are required to submit when a qualified facility is placed in service may get updated for Program year 2024.

One commenter provided that a final, PE stamped as-built design plan is unnecessary. The commenter stated that applicants should instead be able to rely

upon the as-built design plan for the project (without a PE stamp, at least in jurisdictions where such a stamp is not required), or other permitting documentation from the authority having jurisdiction, demonstrating the nameplate capacity. This suggestion is partially adopted in the Revenue Procedure 2023–27, allowing as-built design plans to be submitted without a PE stamp in cases where the local jurisdiction does not require such a stamp. The Treasury Department and the IRS further note that the as-built design plan is only one of three options for verifying as-built nameplate capacity, which provides flexibility for applicants. A PTO letter with nameplate capacity listed or other documentation from an unrelated party verifying as-built nameplate capacity are also reliable and acceptable options.

Also, as discussed in part V.5 of this Summary of Comments and Explanation of Revisions section, the Treasury Department and the IRS determined that to better achieve the goal of verifying Program compliance, the final regulations will require that facility owners must prepare a Benefits Sharing Statement, which must include certain information, and that the Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits. Therefore, this Benefits Sharing Statement, instead of a Benefits Sharing Agreement, will be required documentation upon placing a Category 3 property in service.

XII. Placed in Service Prior to Allocation Award

The Proposed Rules, consistent with an earlier statement in section 4.05 of Notice 2023–17, provided that facilities placed in service prior to being awarded an allocation of Capacity Limitation would not be eligible to receive an allocation.

Some commenters disagreed with the proposal that facilities must be placed in service after being awarded an allocation of Capacity Limitation to be eligible to receive an allocation. These commenters focused on the impact this will have on the economics of their projects for the Program as well as timing issues they argue arise due to waiting for allocation. For example, one commenter stated that they will not be able to complete projects without the bonus credit because the “economics” of their projects will be “severely impacted”, and if they must apply first to get an award, that the projects will be delayed to 2024. Another commenter noted specifically for Category 3 that multifamily affordable housing owners have been relying on the initial guidance and the February 13, 2023, statutory due date, and they have been planning on deploying solar power and storage that benefits residents of affordable housing since the day the IRA became law. The commenter added that these projects would not be economically viable without the Low-Income Communities Bonus Credit, and absent the bonus credit, these same developers would have planned to develop significantly smaller solar installations that offset common area electric loads only and would not have planned larger solar and storage facilities that also provide a direct economic benefit to low-income residents. This commenter disagreed with the statement that facilities placed in service prior to the allocation process do not increase adoption of and access to renewable energy facilities. Additionally, two commenters noted that the rationale for not allowing projects placed into service after January 1, 2023, but before receiving an allocation, to be eligible for the bonus allocation is insufficient, and should be rescinded.

Some commenters expressed concern over the potential impact that this proposal would have on low-income residents, including Tribal members. Likewise, another commenter suggested that the Treasury Department and the IRS should reconsider the placed into service requirements due to reliance concerns and negative economic impacts on Tribes. The commenter

explained that many new Tribal projects were planned, developed and started construction after the IRA passed in anticipation of qualifying for the bonus credit. This expectation escalated Tribal projects that might not otherwise have been developed—just as the statute intended. This commenter specifically suggested that Tribal projects that are placed in service after January 1, 2023, should be eligible for this bonus allocation. Another commenter noted a particular project for which they would be able to provide 25 percent energy savings directly to low-income families if they receive the allocation, and without that bonus amount, their financing costs would rise (due to increased returns provided to their equity investor) and consequently they would have to reduce the economic savings to 20 percent. In this example, the commenter believed that providing an additional 5 percent in direct economic benefits to low-income families would increase adoption and access to renewable energy. Similarly, another commenter contended that, due to this requirement that a project must be placed in service after an allocation award, it would be more burdensome and therefore less likely that low-income communities with environmental justice concerns will benefit from the Program.

Two commenters suggested allowing facilities that were placed in service after the date of the initial guidance, February 13, 2023. Another commenter suggested including facilities for which construction began after the enactment of the IRA on August 16, 2022. One commenter made some specific recommendations depending on the type of project. This commenter suggested allowing all facilities (in addition to Category 1 facilities) that have allocations awarded under the rolling application process to be placed in service prior to an allocation award. Alternatively, this commenter suggested allowing single-family residential rooftop facilities in Category 1 that have allocations awarded under the rolling application process to be placed in service prior to allocation award. This commenter also agreed with other commenters that 2023 capacity allocations be allowed for any qualifying Category 3 facility placed in service after final Program rules are issued noting that this suggestion is based on the longer development timelines and unique cost considerations for Category 3 projects.

Another commenter suggested modifying the requirement to instead provide that projects must be placed in

service after application, rather than after allocation.

After consideration of the comments described herein, the final regulations adopt the Proposed Rule providing that projects must be placed in service after allocation. The Treasury Department and the IRS considered these comments but ultimately decided not to make a change because requiring projects be placed in service after allocation provides the best way to promote the increase of, and access to, renewable energy facilities that would not be completed in the absence of the Program. Although Treasury and IRS recognize the economic and business-model concerns raised by commenters, these issues are largely the result of allocations not being readily available before the Program opens. These issues are therefore expected to significantly diminish in the future. Further, section 48(e)(4)(E)(i) provides a lengthy window of four years to place a facility in service following an allocation of Capacity Limitation, supporting that statutory intent is for allocations to go to new facilities that have not yet been placed in service. The Treasury Department and the IRS therefore believe that this rule best accomplishes Congress’s intent of the Program to encourage new development of renewable energy and the corresponding benefits to low-income communities. The Program cannot encourage additional renewable energy facilities in connection with low-income communities if those facilities were already placed in service without the Program.

XIII. Disqualification After Receiving an Allocation

The Proposed Rules provided that a facility that was awarded a Capacity Limitation allocation is disqualified from receiving that allocation if prior to or upon the facility being placed in service: (1) the location where the facility will be placed in service changes; (2) the nameplate capacity of the facility increases such that it exceeds the less than 5 MW AC maximum net output limitation provided in section 48(e)(2)(A)(ii) or decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation; (3) the facility cannot satisfy the financial benefits requirements under section 48(e)(2)(B)(ii) as planned (if applicable) or cannot satisfy the financial benefits requirements under section 48(e)(2)(C) as planned (if applicable); (4) the eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date

the applicant was notified of the allocation of Capacity Limitation to the facility; or (5) the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service such that the Ownership Criteria is no longer satisfied, unless (a) the original applicant retains an ownership interest in the entity that owns the facility and (b) the successor owner attests that after the five year recapture period, the original applicant that met the Ownership Criteria will become the owner of the facility or that this original applicant will have the right of first refusal.

Commenters expressed concern over some of the disqualification factors set forth in the Proposed Rules. In response to the proposal that a certain decrease in nameplate capacity results in a disqualification, one commenter suggested increasing the threshold for disqualification due to a size reduction from 25 percent to at least 30 percent. Another commenter recommended that the 2 kW or 25 percent threshold be applicable to both increasing and decreasing the system's size.

Based on an assessment of other similar State programs and because this is an allocated credit with a finite amount of capacity awarded each year, the Treasury Department and the IRS have declined to adopt the comment to increase the size reduction to 30 percent.

For a different disqualification factor that would occur when the eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation, a commenter suggested that projects receiving an allocation of bonus credits be allowed to show alternative forms of completion within the four-year window apart from "placed in service," which commenter says unfairly depends on the utility's timeline for signing off on the project. Another commenter recommended adding additional requirements for the topic of placed in service for Category 1. This commenter suggested that for BTM projects that are smaller than 1 MW, these projects be required to attest that the project is active and moving forward towards being placed in service on an annual basis after receiving an allocation, or until the eligible property is placed in service. The commenter proposed that if the applicant is non-responsive or declines to attest that the project is active, then the allocation should be forfeited and the capacity returned and

that applicants should also be able to proactively forfeit an allocation. The commenter's reasoning for this is that in commenter's view four years is far beyond the necessary time frame for smaller projects that can be completed in months instead of years.

The Treasury Department and the IRS did not adopt these recommendations. Section 48(e)(4)(E) sets the placed in service deadline for the Program by providing that section 48(e)(1) does not apply with respect to any property that is placed in service after the date that is four years after the date of the allocation with respect to the facility of which such property is a part. Therefore, providing any type of alternative forms of completion within the four-year window apart from "placed in service" is inconsistent with the statute and not allowed. Similarly, additional burdens (and repercussions for non-compliance) of annual attestation requirements for smaller Category 1 projects should not be imposed.

The Proposed Rules provided that if the facility received a Capacity Limitation allocation based, in part, on meeting the Ownership Criteria and ownership of the facility changes prior to the facility being placed in service such that the Ownership Criteria is no longer satisfied, unless (a) the original applicant retains an ownership interest in the entity that owns the facility and (b) the successor owner attests that after the five year recapture period, the original applicant that met the Ownership Criteria will become the owner of the facility or that this original applicant will have the right of first refusal. Commenters observed that put options, which are often used in tax equity structures, were excluded from the proposed rule. The Treasury Department and the IRS have modified this rule to better reflect contractual arrangements used with tax equity financing structures and to avoid unintended complications with other tax guidance. The final regulations eliminate the attestation regarding a call, put, or right of first refusal is that such contractual rights exist. Rather, the final regulations provide that if the facility received a Capacity Limitation allocation based, in part, on meeting the ownership criteria and if ownership of the facility changes prior to the facility being placed in service the facility is disqualified, unless the original applicant transfers the facility to an entity treated as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such

partnership and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

XIV. Recapture of Section 48(e) Increase

In accordance with section 48(e)(5), the Proposed Rules provided for recapturing the benefit of any section 48(e) Increase with respect to any property that ceases to be property eligible for such section 48(e) Increase (but that does not cease to be investment credit property within the meaning of section 50(a)). In accordance with section 48(e)(5), the Proposed Rules provided that the period and percentage of such recapture is determined under rules similar to the rules of section 50(a). In accordance with section 48(e)(5), the Proposed Rules acknowledged such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such section 48(e) Increase, the eligibility of such property for such section 48(e) Increase is restored. In accordance with section 48(a)(5), the Proposed Rules provided that such restoration of a section 48(e) Increase is not available more than once with respect to any facility.

The Proposed Rules provided that the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48(e): (1) property described in section 48(e)(2)(A)(iii)(II) fails to provide financial benefits over the 5-year period after its original placed in service date; (2) property described under section 48(e)(2)(B) ceases to allocate the financial benefits equitably among the occupants of the dwelling units, such as not passing on to residents the required net energy savings of the electricity; (3) property described under section 48(e)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48(e)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate; (4) for property described under section 48(e)(2)(B), the residential rental building the facility is a part of ceases to participate in a covered housing program or any other housing program described in section 48(e)(2)(B)(i), if applicable; and (5) a facility increases its output such that the facility's output is 5 MW AC or greater,

unless the applicant can prove that the output increase is not attributable to the original facility but rather is output associated with a new facility under the 80/20 Rule (the cost of the new property plus the value of the used property). See Rev. Rul. 94–31, 1994–1 C.B. 16.

Commenters submitted recommendations and questions related to the recapture provisions in the Proposed Rules. One commenter suggested stricter rules by requiring attestations that the owner of the facility will maintain eligibility under the Program for a minimum of 15 years, or the lifetime of the project. This commenter said if it is not possible to require this sort of covenant or attestation, the Treasury Department and the IRS should instead implement continual and spontaneous audits of projects. The Treasury Department and the IRS did not adopt this suggestion. Under the recapture provisions of section 48(e)(5), Congress provided that the period and percentage of such recapture must be determined under rules similar to the rules of section 50(a). Section 50(a) generally provides that this is a five year period with differing applicable percentages depending on when the property ceases to qualify. Therefore, under section 48(e)(5), stricter restrictions related to recapture should not be imposed.

Two commenters raised concerns about the recapture event that occurs when the property ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48(e)(2)(C). Another commenter raised a similar issue regarding the Proposed Rule that projects can only cure an issue related to low-income verification one time if the 50 percent financial benefits threshold is not met. This commenter stated that, due to the complexity of subscription management, potential defaults, and subscription termination, it is possible that projects will dip below this 50 percent threshold more than once due to no fault of the project owner. This commenter recommended that the rules be revised to allow projects to dip below the 50 percent threshold if there is proven effort to restore the low-income percentage. The Treasury Department and the IRS did not adopt these recommendations because it is inconsistent with section 48(e)(5). Section 48(e)(5) allows only a one-time restoration of section 48(e) eligibility per facility if the facility ceases to qualify for an allocation of Capacity Limitation before recapture of the section 48(e) Increase is triggered.

A different commenter suggested an additional recapture event that rooftop

solar lease and PPA providers should attest that they will adhere to the provisions of the Consumer Leasing Act (15 U.S.C. 1667–1667f), and the rules should make documented violations of the Consumer Leasing Act an event that would trigger recapture of the allocation. While the Treasury Department and the IRS understand the commenter's concern, the statute provides no requirements related to the Consumer Leasing Act, and therefore, the final regulations do not impose this requirement on the applicants.

The final regulations related to recapture adopt the requirements from the Proposed Rules but also include a clarification that any event that results in recapture under section 50(a) will also result in recapture of the benefit of the section 48(e) Increase. The exception to the application of recapture provided in § 1.48(e)–1(n)(2) does not apply in the case of a recapture event under section 50(a).

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information in these final regulations contain reporting and recordkeeping requirements that are required to obtain the section 48(e) Increase. This information in the collections of information would generally be used by the IRS and DOE for tax compliance purposes and by taxpayers to facilitate proper reporting and compliance. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The recordkeeping requirements mentioned within this final regulation are considered general tax records under Section 1.6001–1(e). These records are required for the IRS to validate that

taxpayers have met the regulatory requirements and are entitled to receive a section 48(e) Increase. For PRA purposes, general tax records are already approved by OMB under 1545–0123 for business filers, 1545–0074 for individual filers, and 1545–0047 for tax-exempt organizations.

The final regulations also describe reporting requirements for providing attestations and supporting documentation for the initial application, providing supporting documentation for specific facilities, and confirming a facility is placed in service as detailed in these final regulations.

These attestations and documentation would allow IRS to allocate Capacity Limitation and ensure taxpayers maintain compliance. To assist with the collections of information, DOE will provide certain administration services for the Program. Among other things, DOE will establish a website portal to review the applications for eligibility criteria and will provide recommendations to the IRS regarding the selection of applications for an allocation of Capacity Limitation. These collection requirements will be submitted to the Office of Management and Budget (OMB) under 1545–2308 for review and approval in accordance with 5 CFR 1320.11. The likely respondents are business filers, individual filers, and tax-exempt organization filers. A summary of paperwork burden estimates for the application, supporting documentation, and attestations is as follows:

Estimated number of respondents: 70,000.

Estimated burden per response: 60 minutes.

Estimated frequency of response: 1 for initial applications, 1 for supporting documentation, and 1 for projects placed in service.

Estimated total burden hours: 210,000 burden hours.

The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations. Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Rules. As described in the relevant portions of this preamble, the Treasury Department and IRS believe that the documentation requirements are necessary to administer the Program.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal will not have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis (FRFA) of the final regulations. The Treasury Department and the IRS have not determined whether the final regulations will have a significant economic impact on a substantial number of small entities. This determination requires further study and an FRFA is provided in these final regulations.

Pursuant to section 7805(f) of the Code, these final regulations were submitted to the Chief Counsel of Advocacy of the Small Business Administration, and no comments were received.

1. Need for and Objectives of the Rule

The final regulations would provide guidance for purposes of participation in the Program to allocate the environmental justice solar and wind capacity limitation under section 48(e) for the Program. The final regulations are expected to encourage applicants to invest in solar and wind energy. Thus, the Treasury Department and the IRS intend and expect that the final regulations will deliver benefits across the economy and environment that will beneficially impact various industries.

2. Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments filed that specifically addressed the Proposed Rules and policies presented in the IRFA. Additionally, no comments were filed by the Chief Counsel of Advocacy of the Small Business Administration.

3. Affected Small Entities

A total of 1800 MW of capacity are eligible for the section 48(e) bonus credit annually. Assuming the average size of each successful application is near 1 MW, then there will be approximately 2,000 successful applications each year. The Treasury Department and the IRS expect the total number of applications to be significantly higher than this. In addition, the Treasury Department and the IRS also assume that some

successful applicants will submit more than one successful application. The Treasury Department and the IRS do not have information on the expected business entity size distribution of successful applicants but will continue to examine this issue when data is collected during the first round of allocations.

4. Impact of the Rules

The recordkeeping and reporting requirements would increase for applicants that participate in the Program. Although the Treasury Department and the IRS do not have sufficient data to determine precisely the likely extent of the increased costs of compliance, the estimated burden of complying with the recordkeeping and reporting requirements are described in the Paperwork Reduction Act section of this preamble. In particular, the Paperwork Reduction Act section of this preamble contains a summary of paperwork burden estimates for the application, supporting documentation, and submissions when projects are placed in service. The IRS solicited feedback on the collection requirements for the application, supporting documentation, and attestations.

Although no public comments received by the IRS were directed specifically at the PRA or on the collection requirements, several commenters generally expressed concerns about the burdens associated with the documentation requirements contained in the Proposed Rule. As described in the relevant portions of this preamble, the Treasury Department and IRS believe that the documentation requirements are necessary to administer the Program.

5. Steps Taken To Minimize Impacts on Small Entities and Alternatives Considered

The Treasury Department and the IRS considered alternatives to the final regulations. For example, the Treasury Department and the IRS considered exclusively using a lottery system for all over-subscribed categories, rather than creating reservations for facilities meeting ASC. Although a lottery system may ultimately need to be used for an oversubscribed category, the Treasury Department and the IRS decided that it was important to propose reserving Capacity Limitation for facilities that meet certain ASC that further the policy goals of the Program.

Additionally, when considering how to define “in connection with,” the Treasury Department and the IRS were mindful that the statute requires the energy storage technology to be installed

in connection with a qualifying solar or wind facility to be eligible for an increase in the energy percentage used to calculate the amount of the section 48 credit. Different alternatives were considered on how to address this definition. For example, the Treasury Department and the IRS considered but ultimately decided not to incorporate the safe harbor (deeming the energy storage technology to be charged at least 50 percent by the facility if the power rating of the energy storage technology is less than 2 times the capacity rating of the connected wind or solar) as part of the general rule to define “in connection with.” The final regulations instead generally require the energy storage technology to have a sufficient nexus to the other eligible property because it is part of the single project and is significantly charged by the eligible property. The Treasury Department and the IRS maintain the safe harbor in the final regulations, but only as a means of deeming the energy storage technology charging requirement to be satisfied.

Another example where different alternatives were considered was with respect to application materials. Section 48(e)(4)(A) directs the Secretary to provide procedures to allow for an efficient allocation process, and section 48(e)(4)(E)(i) allows an applicant up to four years after receiving a Capacity Limitation allocation to place eligible property into service. Alternatives were considered on how best to balance these statutory requirements, considering practical issues for taxpayers and residents as well as the traditional structure and arrangement of these solar or wind transactions, including considerations on the type of facility (BTM or FTM) and the capacity of the facility. Among other things, the Treasury Department and the IRS considered whether an application for an interconnection agreement or an executed interconnection agreement should be required as part of the application materials. The final regulations are based on the view that the executed interconnection agreement, if applicable, is essential documentation to demonstrate sufficient project maturity.

Additionally, the Treasury Department and the IRS considered a variety of bill credit discounts for Category 4 qualified low-income benefit project facilities. The bill credit discounts considered included 10 percent, 15 percent, or 20 percent. Alternatively, the Treasury Department and the IRS considered the option of a range of discounts from 10 percent to 20 percent from which applicants could

choose the discount rate to provide low-income customers. However, to ensure that low-income customers are receiving meaningful financial benefits, the Treasury Department and the IRS decided to propose a 20 percent discount.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This final rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

VI. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments) prohibits an agency from publishing any rule that has Tribal implications if the rule either imposes substantial, direct compliance costs on Indian tribal governments, and is not required by statute, or preempts Tribal law, unless the agency meets the consultation and funding requirements of section 5 of the Executive Order. These regulations do not have substantial direct effects on one or more federally recognized Indian tribes and do not impose substantial direct compliance costs on Indian tribal governments within the meaning of the Executive Order.

Nevertheless, on June 26, 2023, the Treasury Department and the IRS held a consultation with Tribal leaders requesting assistance in addressing

questions related to Low-Income Communities Bonus Credit Program, which informed the development of these regulations.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a major rule as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

Drafting Information

The principal author of these regulations is the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, the Treasury Department and IRS amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry for § 1.48(e)–1 in numerical order to read in part as follows:

Authority: 26 U.S.C 7805, unless otherwise noted. 26 U.S.C. 7805, unless otherwise noted. 26 U.S.C. 7805. 26 U.S.C. 401(m)(9) and 26 U.S.C. 7805.

* * * * *
Section 1.48(e)–1 issued under 26 U.S.C. 48
* * * * *

■ **Par. 2.** Section 1.48(e)–1 is added:
The additions read as follows:

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This section lists the captions contained in § 1.48(e)–1.

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§ 1.48(e)–1 Low-Income Communities Bonus Credit Program.

(a) *In general.* For purposes of section 48 of the Internal Revenue Code (Code), the energy percentage used to calculate the amount of the energy investment credit determined under section 48(a) (section 48 credit) is increased under section 48(e)(1) in the case of eligible property (as defined in paragraph (c) of this section) that is part of any qualified solar or wind facility (as defined in paragraph (b) of this section) placed in service in connection with low-income communities with respect to which an allocation of the environmental justice solar and wind capacity limitation (Capacity Limitation) is made under the Low-Income Communities Bonus Credit Program (Program) established under section 48(e)(4) of the Code on February 13, 2023. *See* Notice 2023–17, 2023–10 I.R.B. 505. In this section, the terms *applicant* and *taxpayer* are used

interchangeably as the context may require.

(b) *Qualified solar or wind facility defined—*(1) *In general.* A qualified solar or wind facility means any facility that—

(i) Generates electricity solely from a wind facility (described in section 45(d)(1) of the Code) for which an election to treat the facility as energy property was made under section 48(a)(5) (wind facility), solar energy property (described in section 48(a)(3)(A)(i)) (solar energy property), or small wind energy property (described in section 48(a)(3)(A)(vi)) (small wind energy property);

(ii) Has a maximum net output of less than 5 megawatts (MW) (as measured in alternating current (AC)); and

(iii) Is described in at least one of the four categories described in section 48(e)(2)(A)(iii) and paragraph (b)(2) of this section.

(2) *Facility categories—*(i) *Category 1 Facility.* A facility is a *Category 1 Facility* if it is located in a low-income community. The term *low-income community* is generally defined under section 45D(e)(1) of the Code as any population census tract if the poverty rate for such tract is at least 20 percent based on the 2011–2015 American Community Survey (ACS) low-income community data currently used for the New Markets Tax Credit (NMTC) under section 45D, or, in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or, in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. The term *low-income community* also includes the modifications in section 45D(e)(4) and (5) for tracts with low population and modification of the income requirement for census tracts with high migration rural counties. Low-income community information for NMTC can be found at <https://www.cdfifund.gov/cims3>. For purposes of this paragraph (b)(2)(i), if updated ACS low-income community data is released for the NMTC program, a taxpayer can choose to base the poverty rate for any population census tract on either the 2011–2015 ACS low-income community data for the NMTC program or the updated ACS low-income community data for the NMTC program for a period of 1 year following the date of the release of the updated data. After the 1-year transition period, the updated ACS low-income community data for the NMTC program

must be used to determine the poverty rate for any population census tract. Populations census tracts that satisfy the definition of low-income community at the time of application are considered to continue to meet the definition of low-income community for the duration of the recapture period described in paragraph (n)(1) of this section unless the location of the facility changes.

(ii) *Category 2 Facility.* A facility is a *Category 2 Facility* if it is located on Indian land. The term *Indian land* is defined in section 2601(2) of the Energy Policy Act of 1992 (25 U.S.C. 3501(2)).

(iii) *Category 3 Facility.* A facility is a *Category 3 Facility* if it is part of a qualified low-income residential building project. A facility will be treated as part of a *qualified low-income residential building project* if such facility is installed on a residential rental building that participates in a covered housing program or other affordable housing program described in section 48(e)(2)(B)(i) (Qualified Residential Property) and the financial benefits of the electricity produced by such facility are allocated equitably among the occupants of the dwelling units of such building as provided in paragraph (e) of this section. A facility is considered installed on a Qualified Residential Property even if not on the building if the facility is installed on the same or an adjacent parcel of land as the Qualified Residential Property, and the other requirements to be a Category 3 Facility are satisfied.

(iv) *Category 4 Facility.* A facility is a *Category 4 Facility* if it is part of a qualified low-income economic benefit project. A facility will be treated as part of a *qualified low-income economic benefit project* if, as provided in paragraph (f) of this section, at least 50 percent of the financial benefits of the electricity produced by such facility are provided to households with income of less than—

(A) Two-hundred percent of the poverty line (as defined in section 36B(d)(3)(A) of the Code) applicable to a family of the size involved, or

(B) Eighty percent of area median gross income (as determined under section 142(d)(2)(B) of the Code).

(3) *Single project treated as single facility.* Multiple solar or wind facilities or energy properties that are operated as part of a single project are aggregated and treated as a single facility or energy property for purposes of determining if it is a qualified solar or wind facility under paragraph (b)(1) of this section. Any facility or energy property treated as part of a single facility under this paragraph (b)(3) will also be treated as a single facility for all other purposes

under this section and all other guidance applicable to section 48(e) published in the Internal Revenue Bulletin. *See* § 601.601 of this chapter. Whether multiple facilities or energy properties are operated as part of a single project will depend on the relevant facts and circumstances and a single factor may not be dispositive. Factors indicating that multiple facilities or energy properties are operated as part of a single project may include—

- (i) The facilities or energy properties are owned by a single legal entity;
 - (ii) The facilities or energy properties are constructed on contiguous pieces of land;
 - (iii) The facilities or energy properties are described in a common power purchase agreement (PPA) or more than one common power purchase agreements (PPAs);
 - (iv) The facilities or energy properties have a common interconnection;
 - (v) The facilities or energy properties share a common substation;
 - (vi) The facilities or energy properties are described in one or more common environmental or other regulatory permits;
 - (vii) The facilities or energy properties were constructed pursuant to a single master construction contract; or
 - (viii) The facilities or construction of the energy properties was financed pursuant to the same loan agreement.
- (c) *Eligible property*—(1) *In general.* *Eligible property* is energy property that is part of a qualified solar or wind facility described in paragraph (b) of this section. Eligible property also includes energy storage technology (as described in section 48(a)(3)(A)(ix)) installed in connection with such qualifying energy property.
- (2) *Energy storage technology installed in connection with qualified solar or wind facility.* Energy storage technology is installed in connection with other eligible property if the requirements of both paragraph (c)(2)(i) of this section and paragraph (c)(2)(ii) of this section (including by reason of paragraph (c)(3) of this section) are satisfied.
- (i) The requirements of this paragraph (c)(2)(i) are satisfied if the energy storage technology and other eligible property are considered part of a single qualified solar or wind facility based on the energy storage technology and other eligible property being:
- (A) Owned by a single legal entity,
 - (B) Located on the same or contiguous pieces of land,
 - (C) Having a common interconnection point, and

(D) Described in one or more common environmental or other regulatory permits.

(ii) The requirement of this paragraph (c)(2)(ii) is satisfied if the energy storage technology is charged no less than an annual average of 50 percent by the other eligible property.

(3) *Safe harbor for requirement of paragraph (c)(2)(ii) of this section.* For purposes of paragraph (c)(2)(ii) of this section, energy storage technology is deemed to be charged at least 50 percent by the facility if the power rating of the energy storage technology (in kW) is less than 2 times the capacity rating of the connected wind facility (in kW AC) or solar facility (in kW direct current (DC)).

(d) *Location*—(1) *In general.* A qualified solar or wind facility is treated as *located in a low-income community* or *located on Indian land* under section 48(e)(2)(A)(iii)(I) if the qualified solar or wind facility satisfies the Nameplate Capacity Test of paragraph (d)(2) of this section. Similarly, a qualified solar or wind facility is treated as located in a geographic area under the additional selection criteria described in paragraph (h) of this section if it satisfies the Nameplate Capacity Test.

(2) *Nameplate Capacity Test.* A qualified solar or wind facility is considered located in or on the relevant geographic area described in paragraph (d)(1) of this section if 50 percent or more of the facility's nameplate capacity is in a qualifying area. The percentage of a facility's nameplate capacity (as defined in paragraph (d)(2)(i) of this section) that is in a qualifying area is determined by dividing the nameplate capacity of the facility's energy-generating units that are located in the qualifying area by the total nameplate capacity of all the energy-generating units of the facility.

(i) *Nameplate capacity for purpose of Nameplate Capacity Test.* *Nameplate capacity* for an electricity generating unit means the maximum electricity generating output that the unit is capable of producing on a steady state basis and during continuous operation under standard conditions, as measured by the manufacturer and consistent with the definition provided in 40 CFR 96.202. Where applicable, the International Standard Organization conditions are used to measure the maximum electricity generating output or usable energy capacity. For purposes of assessing the Nameplate Capacity Test, qualified solar facilities use the nameplate capacity in DC and qualified wind facilities use the nameplate capacity in AC.

(ii) *Exclusion of energy storage technology.* The nameplate capacity of

any energy storage technology installed in connection with the qualified solar or wind facility is disregarded in applying the Nameplate Capacity Test.

(e) *Financial benefits for a Category 3 Facility*—(1) *In general.* To satisfy the requirements of a Category 3 Facility as provided in paragraph (b)(2)(iii) of this section, the financial benefits of the electricity produced by the facility must be allocated equitably among the occupants of the dwelling units of the Qualified Residential Property. A Qualified Residential Property could either be a multifamily rental property or single-family rental property. The same rules for financial benefits for Category 3 Facilities apply to both types of Qualified Residential Property.

(2) *Threshold requirement.* At least 50 percent of the financial value of the energy produced by the facility (as defined in paragraph (e)(3) of this section) must be equitably allocated to the Qualified Residential Property's occupants that are designated as low-income occupants under the covered housing program or other affordable housing program.

(3) *Financial value of the energy produced by the facility.* For purposes of this paragraph (e), the *financial value of the energy produced by the facility* is defined as the greater of:

- (i) Twenty-five percent of the gross financial value (as defined in paragraph (e)(4) of this section) of the annual energy produced by the energy property, or
- (ii) The net financial value (as defined in paragraph (e)(5) of this section) of the annual energy produced by the energy property.

(4) *Gross financial value.* For purposes of this paragraph (e), *gross financial value* of the annual energy produced by the facility is calculated as the sum of:

- (i) The total self-consumed kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's metered volumetric price of electricity,
- (ii) The total exported kilowatt-hours produced by the qualified solar or wind facility multiplied by the applicable building's volumetric export compensation rate for solar or wind kilowatt-hours, and

(iii) The sale of any attributes associated with the facility's production (including, for example, any Federal, State, or Tribal renewable energy tax credits or incentives), if separate from the metered price of electricity or export compensation rate.

(5) *Net financial value defined*—(i) *Common ownership.* For purposes of this paragraph (e), if the facility and

Qualified Residential Property are commonly owned, *net financial value* is defined as the gross financial value of the annual energy produced minus the annual average (or leveled) cost of the qualified solar or wind facility over the useful life of the facility (including debt service, maintenance, replacement reserve, capital expenditures, and any other costs associated with constructing, maintaining, and operating the facility).

(ii) *Third-party ownership.* For purposes of this paragraph (e), if the facility and the Qualified Residential Property are not commonly owned and the facility owner enters into a PPA or other contract for energy services with the Qualified Residential Property owner and/or building occupants, *net financial value* is defined as the gross financial value of the annual energy produced minus any payments made by the building owner and/or building occupants to the facility owner for energy services associated with the facility in a given year.

(iii) *Equitable allocation of financial benefits.* There are different rules to ensure an equitable allocation of financial benefits depending on whether or not financial value is distributed to building occupants via utility bill savings or through different means.

(A) *If financial value distributed via utility bill savings.* If financial value is distributed via utility bill savings, financial benefits will be considered to be equitably allocated if at least 50 percent of the financial value of the energy produced by the facility is distributed as utility bill savings in equal shares to each building dwelling unit among the Qualified Residential Property's occupants that are designated as low-income under the covered housing program or other affordable housing program (described in section 48(e)(2)(B)(i)) or alternatively distributed in proportional shares based on each low-income dwelling unit's square footage, or each low-income dwelling unit's number of occupants. For any occupant(s) who choose to not receive utility bill savings (for example, exercise their right to not participate in or to opt out of a community solar subscription in applicable jurisdictions), the portion of the financial value that would otherwise be distributed to non-participating occupants must be instead distributed to all participating occupants. No less than 50 percent of the Qualified Residential Property's occupants that are designated as low-income must participate and receive utility bill savings for the facility to utilize this method of benefit distribution. In the case of a solar facility, applicants must follow the

Department of Housing and Urban Development (HUD) guidance on the Treatment of Community Solar Credits on Tenant Utility Bills (July 2022), located at https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_Community_Solar_Credits_signed.pdf, Community Solar Credits in PIH Programs (August 2022), located at https://www.hud.gov/sites/dfiles/documents/Solar%20Credits_PH_HCV.pdf, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48(e)(2)(B) to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted. Applicants should apply similar principles in the case of a wind facility.

(B) *If financial value is not distributed via utility bill savings.* If financial value is not distributed via utility bill savings, financial benefits will be considered to be equitably allocated if at least 50 percent of the financial value of the energy produced by the facility is distributed to occupants using one of the methods described in HUD guidance on the Treatment of Solar Benefits in Master-metered Building (May 2023) located at https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_Community_Solar_Credits_in_MM_Buildings.pdf, or future HUD guidance, or other guidance or notices from the Federal agency that oversees the applicable housing program identified in section 48(e)(2)(B). In the case of a solar facility, applicants must comply with HUD guidance, or future HUD guidance, for how residents of master-metered HUD-assisted housing can benefit from owners' sharing of financial benefits accrued from an investment in solar energy generation to ensure that tenants' utility allowances and annual income for rent calculations are not negatively impacted. Applicants should apply similar principles in the case of a wind facility.

(6) *Benefits Sharing Statement*—(i) *In general.* The facility owner must prepare a *Benefits Sharing Statement*, which must include:

(A) A calculation of the facility's gross financial value using the method described paragraph (e)(4) of this section,

(B) A calculation of the facility's net financial value using the method described in paragraph (e)(5) of this section,

(C) A calculation of the financial value required to be distributed to building occupants using the method described in paragraph (e)(3) of this section,

(D) A description of the means through which the required financial value will be distributed to building occupants, and

(E) If the facility and Qualified Residential Property are separately owned, indication of which entity will be responsible for the distribution of benefits to the occupants.

(ii) *Notification requirement.* The Qualified Residential Property owner must formally notify the occupants of units in the Qualified Residential Property of the development of the facility and planned distribution of benefits.

(f) *Financial benefits for a Category 4 Facility*—(1) *In general.* To satisfy the requirements of a Category 4 Facility as provided in paragraph (b)(2)(iv) of this section:

(i) The facility must serve multiple qualifying low-income households under section 48(e)(2)(C)(i) or (ii) (Qualifying Household),

(ii) At least 50 percent of the facility's total output in kW must be assigned to Qualifying Households, and

(iii) Each Qualifying Household must be provided a bill credit discount rate (as defined in paragraph (f)(2) of this section) of at least 20 percent.

(2) *Bill credit discount rate*—(i) *In general.* A *bill credit discount rate* is the difference between the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by the Qualifying Household on their utility bill) and the cost of participating in the community program (including subscription payments for renewable energy and any other fees or charges), expressed as a percentage of the financial benefit distributed to the Qualifying Household. The bill credit discount rate can be calculated by starting with the financial benefit provided to the Qualifying Household, subtracting all payments made by the Qualifying Household to the facility owner and any related third parties as a condition of receiving that financial benefit, then dividing that difference by the financial benefit distributed to the Qualifying Household.

(ii) *No or nominal cost of participation.* In cases where the Qualifying Household has no or only a nominal cost of participation, the bill credit discount rate should be calculated as the financial benefit provided to a Qualifying Household (including utility bill credits, reductions in a Qualifying Household's electricity rate, or other monetary benefits accrued by a Qualifying Household on their utility bill) divided by the total value of

the electricity produced by the facility and assigned to the Qualifying Household (including any electricity services, products, and credits provided in conjunction with the electricity produced by such facility), as measured by the utility, independent system operator (ISO), or other off-taker procuring electricity (and related services, products, and credits) from the facility.

(iii) *Calculation on annual basis.* In all instances, the bill credit discount rate is calculated on an annual basis.

(iv) *Examples.* The provisions of this paragraph (f)(2) may be illustrated by the following examples:

(A) *Example 1.* A Qualifying Household signs a community solar subscription agreement with the facility owner that (1) requires the facility owner to cause a portion of the electricity generated (or its value) to be assigned to the utility bill of the Qualifying Household on a monthly basis, and (2) requires the Qualifying Household to pay the facility owner the equivalent of 80 percent of the monetary value of the assigned generation (that is, 80 percent of the value of bill credits provided to the Qualifying Household's utility bill) on a monthly basis. In this example, over the course of the first year the facility owner or their agent cause \$200 in utility bill credits to be placed on the Qualifying Household's bill, and the Qualifying Household pays \$160, inclusive of any upfront fees. The subsequent year, due to variation in solar generation and/or the compensation paid by the utility for solar generation, the facility owner, in accordance with the community solar subscription agreement, cause \$220 in bill credits to be provided to the Qualifying Household's bill and the household pays \$176. In each year of facility operation described within this example, a bill credit discount rate of 20 percent is maintained.

(B) *Example 2.* Due to the regulatory structure of the applicable jurisdiction or program, the terms of the community solar subscription, the use of a "net-crediting" mechanism, or other reason, the Qualifying Household does not make a direct payment to the facility owner. Assume that the total value of the electricity produced by the facility and assigned to the household, as measured by the utility, ISO, or other off-taker procuring the electricity, is \$500 in the first year and \$600 in the second year. Assume further that the Qualifying Household receives a "net" bill credit of \$100 in the first year and \$120 in the second year. In this case, the bill credit discount rate is 20 percent in

each year ($\$500 \times .2 = \$100$) and ($\$600 \times .2 = \$120$), respectively.

(3) *Low-income verification*—(i) *In general.* To establish that financial benefits are provided to Qualifying Households as provided in paragraph (f)(1) of this section, applicants must, in accordance with guidance published in the Internal Revenue Bulletin (*see* § 601.601 of this chapter), submit documentation upon placing the qualified solar or wind facility in service that identifies each Qualifying Household, the output from the facility allocated to each Qualifying Household in kW, and the method of income verification utilized for each Qualifying Household. A Qualifying Household's low-income status is determined at the time the household enrolls in the subscription program and does not need to be re-verified.

(ii) *Methods of verification.* Applicants may use categorical eligibility or other income verification methods to establish that a household is a Qualifying Household.

(A) *Categorical eligibility.* *Categorical eligibility* consists of obtaining proof of the household's participation in a needs-based Federal, State, Tribal, or utility program with income limits at or below the qualifying income level required to be a Qualifying Household. Federal programs may include, but are not limited to: Medicaid, Low-Income Home Energy Assistance Program (LIHEAP) administered by the Department of Health and Human Services, Weatherization Assistance Program (WAP) administered by the Department of Energy (DOE), Supplemental Nutrition Assistance Program (SNAP) administered by the Department of Agriculture (USDA), Section 8 Project-Based Rental Assistance, the Housing Choice Voucher Program administered by HUD, the Federal Communication Commission's Lifeline Support for Affordable Communications, the National School Lunch Program administered by the USDA, the Supplemental Security Income Program administered by the Social Security Administration, and any verified government or non-profit program serving Asset Limited Income Constrained Employed (ALICE) persons or households. With respect to the Federal programs listed previously an individual in the household must currently be approved for assistance from or participation in the program with an award letter or other written documentation within the last 12 months for enrollment in that program to establish categorical eligibility of the household. State agencies can also provide verification that a household is

a Qualifying Household if the household participates in a State's solar or other program and income limits for such program are at or below the qualifying income level required to be a Qualifying Household. The qualifying income level for a Qualifying Household is based on where such household is located.

(B) *Other income verification methods.* Paystubs, Federal or State tax returns, or income verification through crediting agencies and commercial data sources can be used to establish that a household is a Qualifying Household.

(C) *Impermissible verification method.* A self-attestation from a household is not a permissible method to establish a household is a Qualifying Household. This prohibition on direct self-attestation from a household does not extend to categorical eligibility for needs-based Federal, State, Tribal, or utility programs with income limits that rely on self-attestation for verification of income.

(g) *Annual Capacity Limitation.* Under section 48(e)(4)(C), the total annual capacity limitation is 1.8 gigawatts of DC capacity for the calendar year 2023 and 2024 Program. The annual Capacity Limitation for each Program year is divided across the four facility categories described in section 48(e)(2)(A)(iii) and paragraph (b)(2) of this section as provided in guidance published in the Internal Revenue Bulletin. *See* § 601.601 of this chapter. The Capacity Limitation for each Program year is divided across the four facility categories based on factors such as the anticipated number of applications that are expected for each category and the amount of Capacity Limitation that needs to be reserved for each category to encourage market participation in each category consistent with statutory intent and the goals of the Program. After the Capacity Limitation for each facility category is established in guidance published in the Internal Revenue Bulletin, it may later be re-allocated across facility categories and sub-reservation in the event one category or sub-reservation is oversubscribed and another has excess capacity. A facility category or sub-reservation is oversubscribed if it receives applications in excess of Capacity Limitation reserved for the facility category or sub-reservation.

(h) *Reservations of Capacity Limitation allocation for facilities that meet certain additional selection criteria*—(1) *In general.* At least 50 percent of the total Capacity Limitation in each facility category described in paragraph (b) of this section will be reserved for qualified facilities meeting

the additional selection criteria described in paragraph (h)(2) of this section (relating to ownership criteria) and paragraph (h)(3) of this section (relating to geographic criteria) as provided in guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter. Revenue Procedure 2023–27, 2023–35 I.R.B. provides the specific amounts reserved for 2023 and future guidance published in the Internal Revenue Bulletin will provide the amounts reserved for future years. The procedure for utilizing these additional selection criteria is provided in guidance published in the Internal Revenue Bulletin. After the reservation of Capacity Limitation for qualified facilities meeting the additional selection criteria described in paragraphs (h)(2) and (3) of this section is established in guidance published in the Internal Revenue Bulletin, it may later be re-allocated across facility categories and sub-reservations in the event one category or sub-reservation within a category is oversubscribed and another has excess capacity.

(2) *Ownership criteria*—(i) *In general.* The ownership criteria is based on characteristics of the applicant that owns the qualified solar or wind facility. A qualified solar or wind facility will meet the ownership criteria if it is owned by one of the following:

(A) A Tribal enterprise (as defined in paragraph (h)(2)(iii) of this section),

(B) An Alaska native corporation (as defined in paragraph (h)(2)(iv) of this section),

(C) A renewable energy cooperative (as defined in paragraph (h)(2)(v) of this section),

(D) A qualified renewable energy company meeting certain characteristics (as defined in paragraph (h)(2)(vi) of this section), or

(E) A qualified tax-exempt entity (as defined in paragraph (h)(2)(vii) of this section).

(ii) *Indirect ownership*—(A) *Disregarded entities.* If an applicant wholly owns an entity that is the owner of a qualified solar or wind facility, and the entity is disregarded as separate from its owner for Federal income tax purposes (disregarded entity), the applicant, and not the disregarded entity, is treated as the owner of the qualified solar or wind facility for purposes of the ownership criteria.

(B) *Partnership; ownership of a partnership for purposes of ownership criteria.* If an applicant is an entity treated as a partnership for Federal income tax purposes, and an entity described in paragraphs (h)(2)(i)(A) through (E) of this section owns at least a one percent interest (either directly or

indirectly) in each material item of partnership income, gain, loss, deduction, and credit and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership, the qualified solar or wind facility will be deemed to meet the ownership criteria. If the partnership becomes the owner of the facility after an allocation is made to an entity described in paragraphs (h)(2)(i)(A) through (E) of this section, the transfer of the facility to the partnership is not a disqualification event for purposes of paragraph (m)(5) of this section, so long as the requirements of paragraph (m)(5) of this section are satisfied. The original applicant and the successor partnership should refer to guidance published in the Internal Revenue Bulletin for the procedures to request a transfer of the Capacity Limitation allocation to the successor partnership.

(iii) *Tribal enterprise.* A Tribal enterprise for purposes of the ownership criteria is an entity that is:

(A) Owned at least 51 percent directly by an Indian Tribal government (as defined in section 30D(g)(9) of the Internal Revenue Code (Code)), or owned at least 51 percent indirectly through a corporation that is wholly owned by the Indian Tribal government and is created under either the Tribal laws of the Indian Tribal government or through a corporation incorporated under the authority of either section 17 of the Indian Reorganization Act of 1934, 25 U.S.C. 5124 or section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. 5203), and

(B) Subject to Tribal government rules, regulations, and/or codes that regulate the operations of the entity.

(iv) *Alaska native corporation.* An Alaska Native corporation for purposes of the ownership criteria is defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m).

(v) *Renewable energy cooperative.* A renewable energy cooperative for purposes of the ownership criteria is an entity that develops qualified solar and/or wind facilities and is either:

(A) A consumer or purchasing cooperative controlled by its members with each member having an equal voting right and with each member having rights to profit distributions based on patronage as defined by proportion of volume of energy or energy credits purchased (kWh), volume of financial benefits delivered (\$), or volume of financial payments made (\$); and in which at least 50 percent of the

patronage in the qualified facility is by cooperative members who are low-income households (as defined in section 48(e)(2)(C)), or

(B) A worker cooperative controlled by its worker-members with each member having an equal voting right.

(vi) *Qualified renewable energy company.* A qualified renewable energy company for purposes of the ownership criteria is an entity that serves low-income communities and provides pathways for the adoption of clean energy by low-income households. In addition to its general business purpose, a qualified renewable energy company must satisfy the ownership requirements described in one of paragraphs (h)(2)(vi)(A) through (F) of this section and each of the requirements in paragraphs (h)(2)(vi)(G), (H), and (I) of this section.

(A) At least 51 percent of the entity's equity interests are owned and controlled by one or more individuals.

(B) At least 51 percent of the entity's equity interests are owned and controlled by a Community Development Corporation (as defined in 13 CFR 124.3).

(C) At least 51 percent of the entity's equity interests are owned and controlled by an agricultural or horticultural cooperative (as defined in section 199A(g)(4)(A)).

(D) At least 51 percent of the entity's equity interests are owned and controlled by an Indian Tribal government (as defined in section 30D(g)(9)).

(E) At least 51 percent of the entity's equity interests are owned and controlled by an Alaska Native corporation (as defined in section 3 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602(m)).

(F) At least 51 percent of the entity's equity interests are owned and controlled by a Native Hawaiian organization (as defined in 13 CFR 124.3).

(G) Has less than 10 full-time equivalent employees (as determined under section 4980H(c)(2)(E) and (c)(4)) and less than \$20 million in annual gross receipts in the previous calendar year; this must include the employees or receipts of all affiliates when determining the size of a business. Affiliation with another business is based on the power to control, whether exercised or not. The power to control exists when an external party has 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement, or when one or more parties own a large share compared to other parties.

(H) First installed and/or operated a qualified solar or wind facility as defined in section 48(e)(2)(A) two or more years prior to the date of application; or

(I) Has provided solar services as a contractor or subcontractor to qualified solar or wind facilities as defined in section 48(e)(2)(A) with at least 100 kW of cumulative nameplate capacity located in one or more low-income communities as defined in section 48(e)(2)(A)(iii)(I).

(vii) *Qualified tax-exempt entity.* A qualified tax-exempt entity for purposes of the ownership criteria is:

(A) An organization exempt from the tax imposed by subtitle A by reason of being described in section 501(c)(3) or section 501(d);

(B) Any State, the District of Columbia, or political subdivision thereof, or any agency or instrumentality of any of the foregoing;

(C) An Indian Tribal government (as defined in section 30D(g)(9)), a political subdivision thereof, or any agency or instrumentality of any of the foregoing; or

(D) Any corporation described in section 501(c)(12) operating on a cooperative basis that is engaged in furnishing electric energy to persons in rural areas.

(3) *Geographic criteria*—(i) *In general.* Geographic criteria does not apply to Category 2 Facilities. To meet the geographic criteria, a facility must be located in a county or census tract that is described in paragraph (h)(3)(i)(A) or (B) of this section. Applicants who meet the geographic criteria at the time of application are considered to continue to meet the geographic criteria for the duration of the recapture period, unless the location of the facility changes.

(A) *Persistent Poverty County.* A Persistent Poverty County (PPC) for which information can be found at <https://www.ers.usda.gov/data-products/poverty-area-measures/>, which is generally defined as any county where 20 percent or more of residents have experienced high rates of poverty over the past 30 years. For the purposes of the Program, the PPC measure is that adopted by the USDA to make this determination. The most recent measure, which would apply for the 2023 Program year, incorporates poverty estimates from the 1980, 1990, and 2000 censuses, and 2007–11 ACS 5-year average. If updated data is released by USDA, a taxpayer will have a 1-year period following the date of the release of the updated data to be eligible under the previous data. After the 1-year transition period, the updated data must be used to determine eligibility.

Applicants who satisfy the definition of PPC community at the time of application are considered to continue to meet the definition of PPC for the duration of the recapture period described in paragraph (n)(1) of this section, unless the location of the facility changes.

(B) *Certain census tracts.* A census tract that is designated in the Climate and Economic Justice Screening Tool (CEJST), which can be found at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>, as disadvantaged based on whether the tract is described in paragraph (h)(3)(ii)(A) or (B) of this section. The CEJST website provides further detail on the terms described in paragraphs (h)(3)(ii)(C) through (E) of this section, which are used in identifying census tracts described in paragraphs (h)(3)(ii)(A) and (B) of this section. See CEJST, Methodology & data, <https://screeningtool.geoplatform.gov/en/methodology>.

(ii) *Applicable terms for certain census tracts.* The following terms are applicable to this paragraph (h)(3):

(A) *Energy burden or cost.* The census tract is greater than or equal to the 90th percentile for energy burden (or energy cost) and is greater than or equal to the 65th percentile for low income.

(B) *Exposure.* The census tract is greater than or equal to the 90th percentile for PM_{2.5} exposure and is greater than or equal to the 65th percentile for low income.

(C) *Energy cost.* Energy cost is defined as average household annual energy cost in dollars divided by the average household income.

(D) *PM_{2.5}.* PM_{2.5} is defined as fine inhalable particles with 2.5 or smaller micrometer diameters. The percentile is the weight of the particles per cubic meter.

(E) *Low-income.* Low income is defined as the percent of a census tract's population in households where household income is at or below 200 percent of the Federal poverty level, not including students enrolled in higher education.

(i) *Sub-reservations of allocation for Category 1 Facilities*—(1) *In general.* Capacity Limitation reserved for Category 1 Facilities will be subdivided each Program year for facilities seeking a Category 1 allocation with Capacity Limitation reserved specifically for eligible residential behind the meter (BTM) facilities, including rooftop solar. The remaining Capacity Limitation is available for applicants with front of the meter (FTM) facilities as well as non-residential BTM facilities. The specific sub-reservation for eligible residential BTM facilities in Category 1 is provided

in guidance published in the Internal Revenue Bulletin and is established based on factors such as promoting efficient allocation of Capacity Limitation and allowing like-projects to compete for an allocation. After the sub-reservation is established in guidance published in the Internal Revenue Bulletin, it may later be re-allocated in the event it has excess capacity.

(2) *Definitions*—(i) *Behind the meter (BTM) facility.* For purposes of the Program, a qualified wind or solar facility is BTM if:

(A) It is connected with an electrical connection between the facility and the panelboard or sub-panelboard of the site where the facility is located,

(B) It is to be connected on the customer side of a utility service meter before it connects to a distribution or transmission system (that is, before it connects to the electricity grid), and

(C) Its primary purpose is to provide electricity to the utility customer of the site where the facility is located. This also includes systems not connected to a grid and that may not have a utility service meter, and whose primary purpose is to serve the electricity demand of the owner of the site where the system is located.

(ii) *Eligible residential BTM facility.* For purposes of paragraph (i)(1) of this section, an eligible residential BTM facility is defined as a single-family or multi-family residential qualified solar or wind facility that does not meet the requirements for a Category 3 Facility and is BTM. A qualified solar or wind facility is residential if it is used solar or wind energy to generate electricity for use in a dwelling unit that is used as a residence.

(iii) *Eligible FTM facility.* For purposes of the Program, a qualified solar or wind facility is FTM if it is directly connected to a grid and its primary purpose is to provide electricity to one or more offsite locations via such grid or utility meters with which it does not have an electrical connection; alternatively, FTM is defined as a facility that is not BTM. For the purposes of Category 4 Facilities, a qualified solar or wind facility is also FTM if 50 percent or more of its electricity generation on an annual basis is physically exported to the broader electricity grid.

(j) *Process of application evaluation*—(1) *In general.* Applications for a Capacity Limitation allocation will be evaluated according to the procedures specified in guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter. If a facility category is oversubscribed, a lottery system may be

used to allocate Capacity Limitation to similarly situated applicants.

(2) *Information required as part of application.* Applicants are required to submit with each application for a Capacity Limitation allocation information, documentation, and attestations to demonstrate eligibility for an allocation and project viability as specified in guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter.

(3) *No administrative appeal of capacity limitation allocation decisions.* An applicant may not administratively appeal decisions regarding Capacity Limitation allocations.

(k) *Placed in service—(1) Requirement to report date placed in service.* For any facility that received an allocation of Capacity Limitation the owner of the facility must report to DOE the date the eligible property was placed in service. This report is done through the same portal by which the original application for allocation was submitted.

(2) *Requirement to submit final eligibility information at placed in service time.* At the time that the owner reports that eligible property has been placed in service the owner also must confirm information about the facility and submit additional documentation to prove the facility is still eligible to maintain the allocation and the increased energy percentage under section 48(e)(1) as specified in guidance published in the Internal Revenue Bulletin. See § 601.601 of this chapter.

(3) *DOE confirmation.* DOE will review the placed in service documentation and attestations to determine if the facility meets the eligibility criteria for the owner to claim an increased energy percentage. DOE then provides a recommendation to the IRS regarding whether the facility continues to meet the eligibility requirements for the facility to retain its allocation or if the facility should be disqualified (as provided in paragraph (m) of this section). Based on DOE's recommendation, the IRS will decide whether the facility should retain its allocation or if the facility should be disqualified and will notify DOE of its decision. Each applicant must receive confirmation from the IRS that DOE has reviewed the placed in service submissions, and that eligibility is confirmed, prior to the owner (or a partner or shareholder in the case of a partnership or S corporation) claiming the increased credit amount on Form 3468, *Investment Credit* (or Form 3800, *General Business Credit*), or successor form, if eligible, making a transfer election under section 6418 of the Code, or, if eligible, making an elective

payment election under section 6417 of the Code.

(4) *Definition of placed in service.* For purposes of this section, eligible property is considered placed in service in the earlier of the following taxable years:

(i) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such eligible property begins; or

(ii) The taxable year in which the eligible property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business or in the production of income.

(l) *Facilities placed in service prior to an allocation award—(1) In general.* Qualified solar or wind facilities must be placed in service after being awarded an allocation of Capacity Limitation.

(2) *Rejection or rescission.* An application for a qualified solar or wind facility that is placed in service prior to submission of the application will be rejected. If a facility is placed in service after the application is submitted, but prior to the allocation of Capacity Limitation, and the facility is awarded an allocation, the allocation will be rescinded.

(m) *Disqualification.* A facility will be disqualified and lose its allocation if prior to or upon the facility being placed in service an occurrence described in one of paragraphs (m)(1) through (5) of this section takes place.

(1) The location where the facility will be placed in service changes.

(2) The net output of the facility increases such that it exceeds the less than 5 MW AC output limitation provided in section 48(e)(2)(A)(ii) or the nameplate capacity decreases by the greater of 2 kW or 25 percent of the Capacity Limitation awarded in the allocation (AC for a wind facility; DC for a solar facility).

(3) The facility cannot satisfy the financial benefits requirements under section 48(e)(2)(B)(ii) and paragraph (e) of this section as planned, if applicable, or cannot satisfy the financial benefits requirements under section 48(e)(2)(C) or paragraph (f) of this section as planned, if applicable.

(4) The eligible property that is part of the facility that received the Capacity Limitation allocation is not placed in service within four years after the date the applicant was notified of the allocation of Capacity Limitation to the facility.

(5) The facility received a Capacity Limitation allocation based, in part, on meeting the ownership criteria and ownership of the facility changes prior to the facility being placed in service,

unless the original applicant transfers the facility to an entity treated as a partnership for Federal income tax purposes and retains at least a one percent interest (either directly or indirectly) in each material item of partnership income, gain, loss, deduction, and credit of such partnership and is a managing member or general partner (or similar title) under State law of the partnership (or directly owns 100 percent of the equity interests in the managing member or general partner) at all times during the existence of the partnership.

(n) *Recapture of section 48(e) Increase to the section 48(a) credit—(1) In general.* Section 48(e)(5) provides for recapturing the benefit of any increase in the credit allowed under section 48(a) by reason of section 48(e) with respect to any property that ceases to be property eligible for such increase (but that does not cease to be investment credit property within the meaning of section 50(a)). Section 48(e) provides that the period and percentage of such recapture must be determined under rules similar to the rules of section 50(a). Therefore, if, at any time during the five year recapture period beginning on the date that a qualified solar or wind facility property under section 48(e) is placed in service, there is a recapture event under paragraph (n)(3) of this section with respect to such property, then the Federal income tax imposed on the taxpayer by chapter 1 of the Code for the taxable year in which the recapture event occurs is increased by the recapture percentage of the benefit of the increase in the section 48 credit. The recapture percentage is determined according to the table provided in section 50(a)(1)(B).

(2) *Exception to application of recapture.* Such recapture may not apply with respect to any property if, within 12 months after the date the applicant becomes aware (or reasonably should have become aware) of such property ceasing to be property eligible for such increase in the credit allowed under section 48(a), the eligibility of such property for such increase pursuant to section 48(e) is restored. Such restoration of an increase pursuant to section 48(e) is not available more than once with respect to any facility.

(3) *Recapture events.* Any of the following circumstances result in a recapture event if the property ceases to be eligible for the increased credit under section 48(e):

(i) Property described in section 48(e)(2)(A)(iii)(II) fails to provide financial benefits.

(ii) Property described under section 48(e)(2)(B) ceases to allocate the

financial benefits equitably among the occupants of the dwelling units, such as not allocating to residents the required net energy savings of the electricity, as required by paragraph (e) of this section.

(iii) Property described under section 48(e)(2)(C) ceases to provide at least 50 percent of the financial benefits of the electricity produced to qualifying households as described under section 48(e)(2)(C)(i) or (ii), or fails to provide those households the required minimum 20 percent bill credit discount rate, as required by paragraph (f) of this section.

(iv) For property described under section 48(e)(2)(B), the residential rental building the facility is a part of ceases

to participate in a covered housing program or any other affordable housing program described in section 48(e)(2)(B)(i), as applicable.

(v) A facility increases its output such that the facility's output is 5 MW AC or greater, unless the applicant can prove that the output increase is not attributable to the original facility but rather is output associated with a new facility under the 80/20 Rule (the cost of the new property plus the value of the used property).

(4) *Section 50(a) Recapture.* Any event that results in recapture under section 50(a) will also result in recapture of the benefit of the increase in the section 48 credit by reason of

section 48(e). The exception to the application of recapture provided in paragraph (n)(2) of this section does not apply in the case of a recapture event under section 50(a).

(o) *Applicability date.* The rules of this section will apply to taxable years ending on or after October 16, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: August 2, 2023.

Lily L. Batchelder,

Assistant Secretary (Tax Policy).

[FR Doc. 2023-17078 Filed 8-10-23; 8:45 am]

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